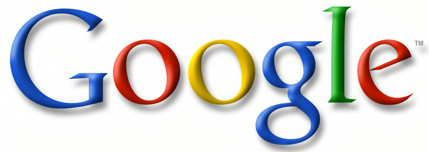

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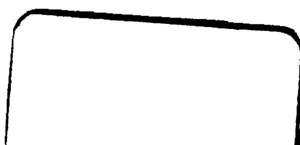

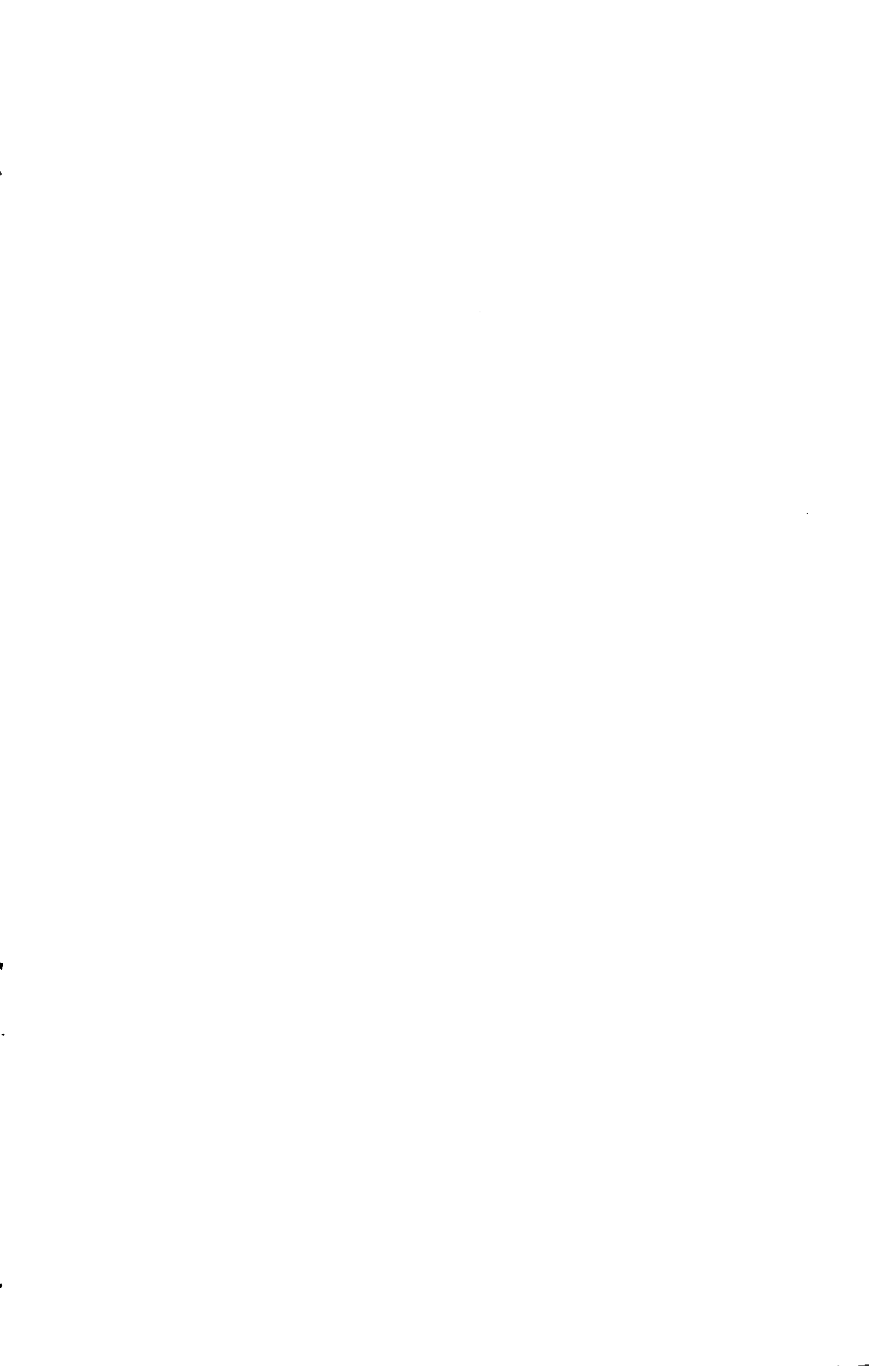

TRAINING
FOR THE PUBLIC PROFESSION OF THE LAW

HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF CONDITIONS IN ENGLAND AND CANADA

BY

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By HENRY S. PRITCHETT, *President of the Carnegie Foundation*

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EDUCATIONAL SURVEYS AND SOCIAL PROGRESS

IF organized society is to continue, the great mass of human beings who compose it must be fed and clothed and warmed and transported. In order that these fundamental needs may be met, certain human forces, many of them of world-wide sweep, must be allowed fair play to work in accordance with economic law. In order that these fundamental processes shall go on, it is essential that the general body of individuals in the civilized world shall be educated, at least to the point where they apprehend the presence of the fundamental economic laws, the methods of coöperation under which their economic needs may be met, and their right both to freedom and to justice.

Formal education, therefore, has become throughout the civilized world the universal business of society, and next to those fundamental processes by which men are fed and clothed and warmed, the business of education is the chief business of society.

In the last twenty years there has been a vast expansion of the machinery of formal education. Not only is the effort made to educate the entire body politic in the elementary knowledge essential to the economic and political safety of the individual, but the institutions of formal education have so expanded as to cover the whole field of human knowledge and of social relations. As a result, the public systems of education in all civilized countries have become enormously complex, in many cases extremely superficial, and in the great majority of cases expensive beyond all expectations. Even in a country so rich and so prosperous as the United States of America, the public school system is to-day in danger of breaking down unless its content shall be brought back once more to a more simple, sincere and thorough basis, and unless this process shall be accompanied by a corresponding reduction in the cost of public education. This growing strain has shown itself in the United States in the past fifteen years in many ways, but perhaps in no more striking way than by the inauguration of a great number of what have been called educational surveys.

These surveys, or studies as they may more properly be called, have been carried out in some cases by an individual, in other cases by a group chosen on the basis of assumed expert knowledge. The nature

of the surveys or studies has varied enormously. In some instances they have been desultory examinations of an institution, or of the educational system of a community or of a state. In other cases the studies, while admittedly fragmentary and incomplete, have nevertheless dealt successfully with the essential questions involved. In still other cases they have been not simply surveys, but serious attempts to procure first of all the facts, secondly to study these facts critically, and finally to marshal them in such form that they shall be available to those in the teaching profession, to those charged with its supervision, and to the general public for whose progress and development the school system exists.

The studies which the Carnegie Foundation has undertaken to conduct, through its Division of Educational Enquiry, have attempted to deal in this serious and detailed fashion with the questions to which its studies have been devoted. There was issued in June, 1920, a volume entitled "The Professional Preparation of Teachers for American Public Schools." The volume was based upon a detailed examination of the normal schools of a single typical state. The accumulation of the necessary information, its discussion and presentation, occupied some six years, and involved, first and last, the coöperation of scores of persons connected with the universities, normal schools, departments of education, or related in one way or another to the problems under discussion. This volume, which dealt not only with the organization but with the curriculum of the normal schools, has been received with hearty interest by those engaged in the work of education, and particularly by those concerned with the training of teachers. With the cordial coöperation of the men and women in the normal schools and teachers' training institutes, there is good hope that the study may lead to a forward step in the better education of the teacher and in a higher appreciation of his work, and, what is more important, may lead also to the thorough consideration of the courses of study and of the methods by which teachers are to be prepared and the form of administration under which they can best do their work.

The present bulletin on the "Training for the Public Profession of the Law" is in like manner not a survey. Its preparation has occupied eight years. During part of this period the excitement and stress of war delayed to some extent the preparation and publication of the vol-

ume. But in any case a report conceived in the sense in which this report has been prepared is in only partial measure dependent upon the date of its publication. It represents not simply a criticism of the existing law schools, and of present day tendencies in the training of the lawyer for his profession, but it undertakes to develop in a scholarly way the history and progress of American legal education. It describes the differences in conception that have existed from one period to another of our history; it aims to make clear the relation of the bar and of the bar examinations to legal education, and finally to develop the historical relation between a trained and educated bar and the administration of justice.

In the preparation of the report it has been necessary not only to study the law schools of the country, their history and their growth, but to study as well the machinery of admission to the bar in the existing forty-eight states of the Union and the District of Columbia. The carrying out of this plan has required not only time, but the cooperation of a great number of individual members of the bar, judges, professors of law and public men interested in education and in the administration of justice. From first to last some forty persons have collaborated in one form or another in the collection and classification of the enormous mass of information thus brought together. This volume is the result, therefore, of eight years of work, involving the cooperation of many people, in the endeavor to present to the American bar and to the American public a report that should not merely set forth present day facts of legal education, but should show with clearness the development of legal education under the conditions that have existed in our various commonwealths, and thus furnish a perspective in which those who are concerned with the betterment of legal education and the improvement of American justice may view the whole process of legal education as it has developed since the beginning of the Republic.

Early in this enquiry it became evident that nothing less than such a study would either permanently affect legal education or satisfy the demands of the American bar. The profession of the law and the relation to it of the law school find no exact counterpart in other professions. Medical education and the medical profession, with which the

comparison is more often made, has been developed on different lines and under a different organization. The medical profession of the United States is a highly organized body. The county society merges into the state society, and the state society into the national society. A group of able leaders in medicine can influence the opinions of the great mass of medical practitioners.

In law, tradition and precedent play an altogether different part from that which these influences play in medicine. The medical practitioner is on the alert to discard the old process for the new. His education makes him hospitable to scientific changes which come with such rapidity. The lawyer, on the other hand, is by his very training inclined to wait on precedent. The reforms that are to-day needed in the administration of justice in our country have been again and again set forth in eloquent and convincing terms by the leaders of the bar and of the bench. They do not reach the minds, or at least they do not secure the coöperation, of the great body of legal practitioners in any such way as the appeals of the leaders of medicine influence the thought and the practice of the medical practitioners of the country. It seemed necessary, therefore, if a report on legal education was to come home to the legal consciousness of American lawyers, that it should be grounded on a study of the precedent, tradition and historical development of legal education in America.

It is an interesting circumstance of the study as developed in this volume that such an historical treatment makes clear the fact that the questions which divide lawyers to-day in regard to legal education and in regard to the administration of justice are not new, but are the same questions which have presented themselves again and again ever since the days of the earliest teaching of law and of the earliest American courts. They are not personal questions; they are questions which will be determined in large measure, in the minds of thoughtful men, by the history of the development and progress of legal ideas.

This volume, therefore, is presented on the part of the Carnegie Foundation for the Advancement of Teaching to the law teachers, to the practitioners of law and to the intelligent men of our country interested in the progress of education and in the betterment of the administration of justice, not as a fugitive study, but as a patient, schol-

arly and serious effort to trace the development of American legal education and the relation of the law school to the practice of the law, and to point out certain broad lines along which legal education and methods of admission to the bar must develop if the profession of the law is to fulfil its true function. The report is not a study of legal procedure; it is a study in education. It has sought to deal with legal forms and processes only so far as they are related to education.

There is a widespread impression in the public mind that the members of the legal profession have not, through their organizations, contributed either to the betterment of legal education or to the improvement of the administration of justice to that extent which society has the right to expect. Whether that impression be ill-founded or not, it is clear that the bar as a special group, and in some respects a privileged group in the social order, will to-day be called upon for a sincere self-examination of its duties to society, and its relation to the realization of justice. It is hoped that this volume, setting forth the history and the development of legal education in the United States, may serve at least some part in enabling the profession itself to discharge that serious and high duty to organized society which is necessary for human progress and for the preservation of civil liberty.

The purpose and scope of this work are clearly set forth in the Introduction. The conclusions are likewise summarized clearly and briefly in the closing pages. The Table of Contents makes clear not only to the legal reader but to the intelligent layman the subdivisions of the subject to which this study naturally leads. Throughout the long and tedious process by which the work has been brought to accomplishment, the author, Mr. Alfred Z. Reed, has labored in the most conscientious endeavor to ascertain the exact facts, and to present them in an impartial and clear way. While Mr. Reed has had the coöperation and the aid of many assistants, the value of the work is due entirely to his industry and devotion.

It remains only to say that this enterprise was undertaken by the Carnegie Foundation not only as a fitting part of its study of education, but in response to the following definite request of the Committee on Education of the American Bar Association under date of February 7, 1913, addressed to the President of the Carnegie Foundation:

This communication is addressed to you by the American Bar Association's Committee on Legal Education and Admissions to the Bar, and has attached to it the signature of each member of the Committee.

The Committee was greatly impressed by the investigation, made a few years ago under your direction by the Carnegie Foundation, into the conditions under which medical education is carried on in the United States. That the medical profession and the entire country was placed under lasting obligation to your organization because of the service that was then rendered is acknowledged by all who know the facts.

The Committee of the Bar Association is most anxious to have a similar investigation made by the Carnegie Foundation into the conditions under which the work of legal education is carried on in this country. There is an imperative need for such an investigation, equally searching and far reaching with the other, and one equally frank and fearless in its statement of the facts which the investigation may reveal.

It is to be hoped that if your organization decides to adopt the suggestion the Committee makes, your investigation will not be confined to the law schools, but may be extended to the matter of admission to the Bar in the various States of the United States with a view of making known to the entire country the facts relating to this important subject.

This Committee has not at its disposal either the funds or the time needed for the comprehensive investigation that is so much to be desired, and it appeals to you therefore to undertake the task and assures you of its readiness to coöperate with you so far as possible, should you conclude to comply with this request.

Yours sincerely,

(*Signed*)

HENRY WADE ROGERS
LAWRENCE MAXWELL
SELDEN P. SPENCER
ROSCOE POUND
W. DRAPER LEWIS

The present volume will be followed in a short time by one dealing with the contemporary situation in greater detail.

HENRY S. PRITCHETT,
President of the Carnegie Foundation.

June, 1921.

TRAINING FOR THE PUBLIC PROFESSION OF THE LAW

INTRODUCTION

OUR contemporary American system of legal education, although it contains elements of great value, is generally recognized to be defective in many respects. Efforts to improve it cannot accomplish their full purpose unless certain fundamental considerations are borne in mind. The underlying causes that have made it what it is to-day determine also the broad lines within which future development is possible.

Foremost among these determining factors is the position that lawyers occupy in the state. Whatever incidental purposes are cherished by particular law schools, the main end of legal education is to qualify students to engage in the professional practice of the law. This is a public function, in a sense that the practice of other professions, such as medicine, is not. Practicing lawyers do not merely render to the community a social service, which the community is interested in having them render well. They are part of the governing mechanism of the state. Their functions are in a broad sense political. This is not due primarily to the circumstance that a large proportion of our legislative and administrative officials, and virtually all our judges, are chosen from among this practically ruling class. Nor is it due entirely to the further circumstance that the growth of our law in the form of judicial decisions that interpret and declare its actual content is necessarily greatly influenced by arguments of counsel. It springs even more fundamentally from the fact, early discovered, that private individuals cannot secure justice without the aid of a special professional order to represent and to advise them. To this end lawyers were instituted, as a body of public servants, essential for the maintenance of private rights. From their earliest origins the law has accorded to these "officers of the court" certain special and exclusive privileges, which set them apart from the mass of the people as truly as if they were, in a strict sense, public officials. The terms upon which the lawyer's privileges may be secured have been embodied in bar admission rules, for the same reason that qualifications for appointment to the civil service have been expressed in statutes and constitutions. The policy adopted by the state, in its attempt to solve this particular part of its general problem of governmental organization, profoundly influences the development of legal education.

Other influences upon the development of law schools that deserve

special mention are the nature of the law that has to be taught, and the type of education and of educational machinery that has already been organized for other purposes. This list of positively influential factors might be indefinitely extended, but these are the three of particular importance from the point of view of the present study. It should not be overlooked that a reverse influence is also exerted. Legal education itself modifies the policy of the state, the nature of its law, and the general educational system of the community. It does this, however, only slowly, and after it has been first adjusted to these external conditions.

These three influences have been uniformly operative. At the same time they have experienced an independent development of their own. Notably, the policy of the state, as reflected in its bar admission rules, has been greatly affected by attempts to realize the ideals of popular self-government. The problem of how to make the bar efficient has been complicated by a desire to make this branch of the public service accessible to the average citizen. Similarly, our law, in its origin, was the common law of England, as distinguished from the so-called "civil law," or modified law of Rome, that has established itself in Continental Europe, Latin America and Japan. This law, however, has been greatly changed in this country, as the result of political separation, a complicated system of government, and conscious efforts at improvement. Finally, our general educational system, as organized both in lower schools and in colleges or universities, has been in a constant state of growth. The development of legal education has necessarily lagged behind the development of these determining factors. Adjustment to existing conditions is not completed before the conditions themselves have changed. The training received by American lawyers to-day has thus become a curious complex. It cannot be understood unless its main features, and the causes that have produced them, are presented in their historical sequence.

This is the task that has been attempted in the following pages. In Part I it is first pointed out that the dissimilar origins of Anglo-American and of civil law have naturally led to the choice of correspondingly different agencies for the purpose of teaching and of testing those who are authorized to practice these two types of law. This country inherited from England the tradition that responsibility both for legal education and for admission to the bar should be placed almost entirely upon practicing lawyers and judges, and should not be shared with uni-

versities to the extent that it is in most other countries. With the lapse of years this tradition has been somewhat weakened in America, but not sufficiently to give to our law schools the position in legal education, or in state requirements for admission to practice, that is held by the law faculties of Continental Europe. In other respects, also, our system of recruiting a legal profession has diverged from that of England, but has not diverged so far as to become like that of other countries. This divergence had begun to appear even prior to the American Revolution, and since then has become quite marked. It is due as much to changes effected by the English in their original system as to innovations of our own. The law and the legal education of England, of England's self-governing colonies and of the United States resemble the branches of a great tree, which reveal at all times their common origin, and yet have each developed along independent lines of their own. Part I necessarily includes a general description of the common trunk — English law and the English legal profession as these were constituted prior to 1776. For comparative purposes the subsequent changes that have occurred in England and in Canada are also briefly noted, and a chapter has been added that summarizes the contrasted development in the United States. Readers who wish only a general survey of American legal education, presented without the distracting apparatus of footnotes, will find here the principal conclusions of the writer.

Those who are interested in tracing the development in greater detail will find in Part II an account of the modifications that have occurred in the original organization of the legal profession, and in state regulations affecting admission to practice, in so far as these modifications have their origin in the political philosophy of our people, rather than in the rise of new institutional forces. The resulting bar admission requirements have not been well calculated to preserve either educational or ethical standards. They have, however, because of their very laxity, permitted a free development of institutions better fitted to serve these ends than are mere regulations of law. Parts III and IV show how, under cover of a prevailing demoralization in legal education and in the bar, two important groups of such institutions arose—first, law schools, and, later, selective bar associations. Part V makes clear the reflex influence exerted upon bar admission requirements by the rise of these two new institutional forces, which unfortunately have not yet learned to coöperate. Parts VI and VII exhibit the notable efforts made by law schools to improve their curricula and methods, during the vital quarter

century that followed the Civil War. Finally, Part VIII discusses briefly the quarter century just ended, whose most important contribution to the development of legal education has been the evidence it affords that lawyers and law schools cannot be made to conform to a single standardized type. This leads up to a description of the divergent types of law schools that have begun to be differentiated from one another, and to the conclusion that three of these types are legitimate and must be separately strengthened and improved, if legal education and its products are to render adequate public service.

The relative brevity of Part VIII, as compared with earlier portions of the present study, is due to an effort to maintain a proper historical perspective. It is not due to a belief in the value of antiquarian research for its own sake. Past events have been narrated at all only for the purpose of throwing light upon events still to come. Previous generations of American lawyers and American schoolmen determined the main lines of legal education in this country. The generation which came into control about 1890 has been occupied chiefly in building upon foundations which its predecessors laid. References to the contemporary situation have been freely inserted in the earlier portions of the study. Recent detail has been eliminated in order to make clear the general principles in accordance with which future development must proceed. Until those responsible for legal education agree as to what these general principles are, consideration of the details is of little avail. A subsequent bulletin will discuss the period between 1890 and the War with Germany at greater length, in connection with a more intensive survey of the contemporary situation.

A word should be added as to the manner in which the years since the outbreak of the German War have been treated. Both our second war with England and our Civil War were followed by periods of original creation in legal education. These in turn were followed by less significant periods devoted mainly to imitation and perfection of detail. It requires no great effort of the imagination to perceive that we stand now on the brink of another creative period. A generation of young men, stirred by the recent conflict, will soon assume control. Their disposition will be not blindly to accept inherited formulas but critically to scrutinize every phase of legal education, with a view to adjusting it to their own altered world. Changes are bound to be made. The only question is whether they will be made wisely, with understanding of the many considerations involved, political as well as educational. It is

for these newcomers, and for the older men who see that this spirit must be reckoned with, that this study has been undertaken.

As yet, however, this new spirit has manifested itself chiefly in a restiveness among law school students. The schools themselves, after a temporary period of war demoralization, have picked up the thread of legal education where they dropped it, and are proceeding for the time being much as before. Such minor changes as have occurred have been strictly in accordance with pre-war tendencies. The question, therefore, of the precise date to which the narrative shall be carried is, broadly speaking, unimportant. It arises mainly when statements seem in order as to the relative number of law schools or of state bar admission systems that possess to-day the varying characteristics described. In such cases the year of the declaration of war — 1917 — has usually been adopted in the text, because of its permanent historical significance. These text statements are frequently supplemented by footnotes giving later information, and the lists of law schools appearing in the Appendix have been brought up to the date of publication. In other words, an attempt has been made to render this study of value both for present and for future readers. Desirable as are the latest obtainable facts, from the point of view of the immediate present, all such details will inevitably become obsolete within a very few years. Information that will then be timely will be most profitably compared with the situation as it existed at one of the great turning-points of our national development.

PART I

COMPARATIVE DEVELOPMENT OF LAW AND THE LEGAL PROFESSION IN ENGLAND, CANADA AND THE UNITED STATES

CHAPTER I

ENGLAND

1. *Maintenance of Professional Control over Legal Education grounded in the Nature of English Common Law*

AMONG the important traditions which this country inherited from England was that legal practitioners—lawyers and judges engaged in the actual administration of justice—possess a peculiar responsibility for the preparation and admission of recruits into their profession. In England and the United States, to a much greater extent than in Continental Europe or in Latin America, practitioners have retained control of legal education in their own hands, instead of sharing this responsibility with the law faculties of universities. It is true that certain portions of a comprehensive preparation for legal practice have interest or value for other than practitioners, and can therefore most conveniently be provided by schools and colleges of general education. The greater the development of these general educational agencies, the less need has there been that practitioners should conduct this part of a lawyer's preparation themselves. Prior to the separation of the American colonies, however, and indeed for many years later, practitioners in England provided the whole of the distinctly vocational or professional training—that portion, that is to say, of a comprehensive preparation for legal practice which, because of its technical detail, is of value only for lawyers. In addition, subject to such legislation as had been enacted, they determined the type and amount of training considered requisite, general as well as professional or technical; they tested the individual applicant's possession of the qualifications prescribed; and they formally admitted him into practice. Furthermore, there were few legislative restrictions upon their control. Parliament had done little more than to vest in the separate courts power to admit attorneys and solicitors, to require the judges to examine applicants, and to specify the number of years that must be served, prior to examination, as articled clerk under a practitioner. These regulations, moreover, did not affect the specially privileged order of barristers who, to this day, independently of legislation, possess full control over admission to their own number.

It is entirely natural that in the infancy of any community the training and testing of law students should be conducted solely by practi-

tioners. For the law itself, in its origin, is merely the bundle of precedents developed by these practitioners. They alone are competent to ensure the communication to others, or to attest the presence in others, of attainments similar to their own. If no complicating influences are at work, it is equally natural that a rudimentary type of educational organization—a single apprentice serving a single practitioner—should develop by multiplication of students into a law class, and by multiplication of instructors into a law school. Still later, this and other similar vocational institutions may or may not become associated with a school or college of general education, and thus constitute a special type of university.

The naturalness of the process is obscured for us by the fact that it was not in this way that either legal education or universities actually developed in modern Europe. Many complicating influences have been at work. Of these, the most important, in its effect upon Continental development, was the early discovery by scholars of a systematized body of Roman law, the cultivation of which was the concern of the mediaeval universities, and indeed—together with the activities of the three other standard faculties of Medicine, Theology and Philosophy or Arts—was the very occasion of their being. This body of law was so far superior to the cruder native law of the developing national states that university-trained scholars were able to press a large part of it into actual use, first by inducing judges to accept its general principles, and later by securing its statutory enactment, suitably modified, in the form of codes. Since these scholars were the ultimate authorities as to the content of the Roman law proper, and were themselves the draftsmen of the codes, they inevitably secured for themselves and for their educational institutions a recognized participation in the training and testing of those who were to make practical or vocational use of their product. So it came about that those who intend to practice the civil law of Continental Europe must to-day study this law systematically in the universities, now state-controlled, and that university examinations, conducted sometimes in coöperation with state officials, constitute the test of proficiency required of the student as to this important portion of his entire course of preparation. The same or similar examinations are naturally used to test his attainments in whatever less strictly vocational branches of knowledge are deemed requisite for him to pursue—non-technical or semi-technical subjects, which in all countries are most conveniently taught in colleges and schools of general education.

At the same time Continental practitioners are not entirely relieved of responsibility. They retain a valuable control over the practical and ethical features of a lawyer's education, but exercise this control in a supplementary way after the groundwork has been laid by the lower schools and by the universities. When, moreover, as usually outside of Germany, private law practice is divided among two or three distinct branches of the profession, the extent to which lower school or university work is required varies with the particular branch. In the lowest, it may even be dispensed with altogether. Thus in France, *avocats* —the highest branch of the profession, who correspond roughly to English barristers—must graduate from the lower schools and study economics, government and technical law for three years in a university. They must then practice for three years as *stagiaires* attached to a particular court, under the supervision of the college or guild of advocates, before they are finally admitted as full members of this privileged body. *Avoués*, corresponding roughly to English solicitors, need present no evidence of preliminary education, and need study in the universities only two years, during which they may also be working in a law office as part of the five years apprenticeship required. For *notaires*, who in civil law countries discharge functions far more important than those of Anglo-American notaries, no general or university education is required. The only qualification is six years service under a *notaire*. Systematic technical training supplementary to this is, however, obtainable in independent notaries' schools. These are the only organized centres of legal education that, like American law schools, have been developed naturally by practitioners.

In England, also, Roman law was cultivated at the universities. This did not produce the same effect as on the Continent, because of the superiority of the native English law, and of the methods devised for its administration. On the Continent, the gradual upbuilding of national states by a process of accretion produced within each a bewildering variety of localized legal systems that fell an easy victim to the simpler and more uniform university-made law. In England, on the other hand, an autocratic Crown early imposed the authority of its judges over the entire kingdom. These judges were thus enabled to weld their decisions into a unified body of "common" law, and were further fortified by an admirable organization of the courts, that combined the advantages of convenient access to suitors in all parts of the kingdom with the steadying influence of permanent central tribunals at

Westminster. Adjacent to these latter the practitioners congregated in the famous Inns of Court—"bar association club houses," we should call them, in modern American terms—and developed for their apprentices a systematic course of training which, as late as the fifteenth century, seems to have been really effective. The native practitioner-made law, thus unified and thus taught, proved strong enough to endure to the present day. For while it has been both possible and usual for future barristers and judges to attend the universities, before or simultaneously with their Inns of Court education, and by this means among others a tincture of Roman law has been infused into that of England, university scholars failed in the sixteenth century to secure the adoption of their law as a whole. Nor have the developing precedents of the courts, although frequently modified by Parliament, ever been expressed in their entirety in the form of a legislative code. English common law has preserved its integrity as a body of principles declared by the judges instead of imposed upon them by external authority. It has naturally followed that judges, or those practicing under them, retain a greater measure of control over legal education in England, and in countries which have inherited its law, than in countries that have adopted the civil law of university scholars.

To this extent the recruiting of the English legal profession has from the beginning been organized in what, with reference to the nature of its law, may be termed a natural manner. Special causes, however, including an indirect influence exerted by the universities, tended to create a somewhat artificial educational system. This system has varied at different periods, and at any one period has not been uniform for the several branches or groups into which practitioners were divided.[1]

2. *Organization of the English Legal Profession*

Of the various separately organized groups into which the English legal profession was divided during the eighteenth century, the most important, with relation to subsequent developments in this country, were the attorneys and the solicitors. Of these two groups, the attorneys were the older. Since, as already noted, they were admitted to practice in the separate courts, by judges who themselves owed their appointment to the Crown, they may be pictured as part of the official

[1] For subsequent discussion of the topic treated in this section, see Chapter IX, sec. 1.

hierarchy of the state, specially devoted to the administration of justice. Their privileged capacity of "officers of the court" lacked, however, at least one attribute of a completely official status. At this time they were no longer limited to a specific number. When attorneys at law were first instituted by Parliament their number was supposed to be thus limited. New attorneys were to be appointed by each court only as vacancies occurred; and because of the constantly recurring complaints as to the number of lawyers, several subsequent attempts were made to enforce this limitation. The increasing pressure of legal business, however, had defeated all these attempts, in either of two ways. In most of the courts, the attempt to limit the number of attorneys was frankly abandoned. In a few courts, the limitation was maintained for the fortunate few who benefited by it; notably so in the Court of Chancery, where for many years a fixed number of attorneys functioned under the name of "clerks." This resulted, however, only in developing an indefinite number of "solicitors," outside of, and technically subordinate to, the attorneys proper. At first entirely unauthorized and irresponsible, in time these solicitors came to be recognized as essentially attorneys, functioning under a different name, and were treated in a similar way in legislation. Because of the superior importance of the Court of Chancery over other courts where a similar situation obtained, the term "solicitor" came in practice to be understood, prior to a change in nomenclature introduced in the nineteenth century, as referring specially to these Chancery (equity) practitioners.

In one way or another, then, efforts to limit the number of these lower or miscellaneous practitioners had failed. Incidentally, all practitioners received their emoluments from private sources instead of from the state, and enjoyed their privileges during good behavior instead of for a limited term. These three features combined to make of English lawyers not subordinate officials, in a technical sense, but rather a privileged class or order, charged with responsibility for certain highly important governmental functions.

Distinct from these lower and as yet disunited practitioners stood the English bar. The physical propinquity of the higher courts at Westminster had been a powerful, if not a determining, factor in the development of this higher branch of the profession, for it brought the ablest practitioners together. At a very early date there arose companies or quasi-corporations of lawyers who owned and resided in the four Inns of Court. These companies were organized by analogy with,

if they were not lineally descended from, the French College of Advocates, and constituted part of the general mediaeval guild or trade union movement to which the universities also owed their origin. Their members early secured the cream of legal practice for themselves. They established their exclusive right to be heard as advocates or counsel (as distinguished from representing clients as attorneys) in all the higher courts, and from their ranks the judges came to be chosen. They enjoyed their privileges in the courts by virtue of their membership in one of these corporations, without judicial action in the individual case. Subject to a vague right of "visitation" claimed by the judges, each corporation was allowed to exercise unchecked control over the admission and discipline of its members. They were themselves divided into a lower order of "councellors-at-law," or, more technically, barristers, and an upper order of serjeants. Of these, only the former now survives; and after the Restoration the technical term "barrister" came to displace "councellor" in popular use. Our American "counsellor-at-law" continues the older terminology. For a time attorneys also had been admitted into the Inns, but in the reign of Elizabeth they were expelled. By this action the English "bar" became definitely organized, apart from the general mass of miscellaneous practitioners, as an independent and self-perpetuating professional organization whose members enjoyed a monopoly of the most highly regarded portion of legal practice and were responsible only to their associates for the proper exercise of their privileges. In the nineteenth century the establishment of a joint Council of Legal Education by the four Inns completed the unification of this branch of the profession.

In the course of time the miscellaneous practitioners, following this analogy, came to be similarly associated within a single corporation charged with full responsibility, under general regulations laid down by Parliament, for admission into this second branch of the profession. This did not occur, however, until long after the separation of the American colonies. In 1776 admission to practice was still vested in the judges of the separate courts. This technical division of the lower practitioners according to the courts in which they practiced had been to some extent obliterated by the prescription of uniform rules for the admission of attorneys into any court of common law and of solicitors into the Court of Chancery, and by the absence of any general prohibition against the admission of the same individual into several courts. Indeed, this process of multiple admission was facilitated by a remission

of fees. This fusing of the practitioners into a single lower branch of the profession was, however, still incomplete. Attorneys privileged to practice in King's Bench and attorneys privileged to practice in Common Pleas continued to be rigorously separated from one another.

As a class these lower practitioners were for a long time in too bad repute, especially in a society largely dominated by considerations of social position, to justify vesting definite powers of control in such associations as existed. Westminster attorneys, after having been expelled from the Inns of Court, had secured control of certain originally subordinate houses, known as Inns of Chancery; and as late as 1704, in order to provide a register of all metropolitan attorneys, the common-law courts attempted to require all attorneys to be admitted into one of these Inns before being permitted to practice. The judges, however, had no means of compelling the Inns to admit new members. The rule could not be enforced, and was doubtless opposed also on other grounds. In 1758 Blackstone described these Inns of Chancery as "neither commodious nor proper for the resort of gentlemen of any rank or figure." A "Society of Gentlemen Practisers in the Courts of Law and Equity" was established as early as 1739, and existed as late as 1822. Among its achievements was the defense of the right of its members to engage in conveyancing (drafting deeds and leases) against the attempted monopoly of the London Company of Scriveners. It was not until 1827 that the present Law Society was founded, and not until four years later that it received its first charter of incorporation. Since then the various groups of practitioners who are not members of the bar have been consolidated by Parliament into the single class of "solicitors." These are entitled to practice law generally (subject to the special privileges reserved for barristers) in any English court, and to secure this privilege under rules prescribed and administered by their own corporation. The analogy provided by the barristers is departed from in one respect. Admission of an individual to the rank of barrister in the Inns carries with it automatically all the privileges of legal practice that barristers enjoy; the Incorporated Law Society, on the other hand, confers upon the student in the first place the privilege of practicing as solicitor, after which he may at his own option become a member of the Society. The privilege of engaging in conveyancing, and of being heard as advocate in the lower courts, is now shared by both branches of the profession.

As has just been intimated, the control possessed by the historic Inns

of Court over the bar made it seem natural for Parliament to vest in the later Incorporated Law Society a similar control over solicitors. Viewed more broadly, the organization of both branches of the legal profession has been largely patterned after that of the older English universities. American readers need to be reminded that these universities, originating in a mediaeval guild movement, were primarily designed to confer degrees rather than to offer instruction. The instruction was originally given in a college, in which residence was required during a certain number of years. The university degree was the sign that after this preparatory period the student, on the basis of independent examinations, had been fully admitted to the company of those who were privileged to hold themselves out as scholars. Law practitioners did not enter this general guild or trade union, but organized themselves into separate ones in a very similar way. In the early part of the fifteenth century the Inns of Court were described by one of their governors as a "university for noblemen," and the title of "barrister," then understood to be the precise equivalent of "bachelor" in the regular universities, is still to some extent regarded as a "degree." The title of "solicitor," although not generally so regarded, is now virtually a degree. Corresponding to the college with its tutorial staff is the office of the already admitted practitioner, with whom an articled clerkship is still required. Corresponding to the university is the Law Society, which conducts, on the model of the regular universities, preliminary, intermediate and final examinations, and admits successful candidates both to the status of solicitor, and—as is now the case also in the regular universities—optionally into its own body. Similarly for the barristers the traditional "keeping of terms" in one of the Inns, although now largely formal, is still the technical equivalent of college residence; and for those thus enrolled in any Inn the more modern Council of Legal Education performs now the university function of conducting examinations.

The content of the preliminary examination conducted by the Law Society has recently been described as about the equivalent of the first two years in the better American high schools. Applicants, however, who can produce evidence of superior general education obtained in universities or lower schools are naturally exempted from this examination, and the great bulk of applicants produce such evidence. Until 1910 admission to the Inns was secured in a similar way. Since then the Council of Legal Education has ceased to conduct preliminary

examinations of its own, and depends entirely upon outside examinations, roughly equivalent to those required for admission to an American college. In both branches of the profession university study is encouraged. University graduates who become solicitors serve only a three-year period of clerkship, subsequent to graduation, in place of the five years technical preparation required of others. University students intending to become barristers may "keep terms" at the Inns while still in residence at the university; and for such men the number of dinners that must be eaten annually during a period of three years, in order to constitute a technical "keeping of terms," is reduced from twenty-four to twelve. To this extent the conditions for admission to the profession articulate with the general educational system of the country.

Consistently, therefore, the control of the English legal profession has remained in the hands of the lawyers themselves, instead of being, as on the Continent, shared with the universities. At the same time the existence of these ancient universities has determined the manner in which the two branches of the profession have been permitted to exercise their powers. Lawyers have retained their own independence, but more and more they have come to operate on the model of these venerable institutions. To a lesser extent than on the Continent, but none the less truly, the universities have constituted a complicating influence that has modified the natural line of development.

This will become even clearer if we describe briefly the system of instruction in technical law that has grown up under the modern organization of English lawyers.[1]

3. *Opportunities provided in England for Systematic Instruction in Technical Law*

During the eighteenth century there was in England no institutional instruction keyed to the special needs of professional lawyers. Blackstone's pioneer lectures on the common law at Oxford, to use his own words, were intended for "gentlemen of all ranks and degrees"—or, in modern language, constituted a step toward "the broadening of the college curriculum." The Inns of Court had long ceased to hold their famous "moots." A statutory requirement that no attorney or solicitor could have more than two articled clerks—a heritage of ancient efforts

[1] Compare Chapter VI, sec. 2.

to limit the size of the profession—prevented the development of private law schools. The only training required of any one was the serving of this clerkship for five years; the final examination by the judge seems to have been purely perfunctory. This rudimentary system at least gave some assurance of practical experience among the miscellaneous practitioners. For the barristers there was not even this. Not only could the requirement of "keeping terms" in the Inns be satisfied, as at present, by eating a certain number of dinners, but in addition the tests imposed at that time were a hollow sham. The system served to make admission to the higher branch of the profession a matter merely of birth and money. In individual cases great lawyers, though not great democrats, were produced by this means, for three reasons: In the first place, the same social and economic standing that made it possible to enter the Inns made possible a university career as well, and thus brought into the bar men of broad general education. In the second place, those who took their profession seriously secured practical experience on their own initiative, then as now, by associating themselves with an older barrister. They either "read in chambers" under him before they were called to the bar, or they "deviled" for him subsequently. Finally, the custom, established about the middle of the eighteenth century, that the solicitor rather than the client chooses the barrister for the particular case, has been a powerful factor in developing high standards of advocacy in England. The solicitors constitute as it were a continuously operating examining body, which picks out of the general mass of barristers the smaller group to whom briefs are actually entrusted.

The first step toward providing systematic legal instruction occurred in 1833, when the Incorporated Law Society established courses of lectures. When, subsequently, this society was entrusted with full responsibility for solicitors, and when the Council of Legal Education inaugurated similar courses for prospective barristers, the resemblance of both bodies to the regular universities was maintained. For although, as already pointed out, the older universities, historically and primarily, are examining bodies, they came also to offer instruction themselves in addition to that provided by the residential colleges. Traditionally, however, in Oxford and Cambridge, this university instruction has been in the nature of opportunities which the student is free to accept or to reject. He is required only to pass the examinations, for which he may prepare himself as he chooses. The instruction provided by the Law

Society and the Council was naturally organized in a similar manner. The Law Society has supplemented its London school by offering correspondence courses, and by making grants to local societies that conduct classes in provincial cities, but neither in London nor in the provinces are students required to attend these schools or classes. The field is thus open for the regular universities to offer similar opportunities. Several of them have done so—the newer universities usually in cooperation with the local law society—and have developed their own system of law examinations, on the strength of which they confer their own law degrees. These degrees are not recognized by the professional examiners, however, except as to such parts of a lawyer's education as traditionally belong to the universities. That is to say, the Law Society will exempt the holder of a university law degree, not only from its preliminary examination, but also from that portion of its intermediate examination which, like Blackstone's lectures, gives a general elementary survey of the law. The Council accords a similar exemption in the case of Roman Law. Both societies, however, determine the attainments of candidates in technical law solely on the basis of their own final examinations, irrespective of whether any systematic training has been secured either in the universities or in their own non-degree-conferring institutions.

Under this system the student who cherishes no higher ambition than to pass the professional examinations finds little incentive to enter a law school or to take a university law course. The period of training under a practitioner—positively required of those intending to be solicitors, and customarily pursued by prospective barristers — has remained the backbone of the educational system. The formal school work is considered as little more than an aid to this, and is usually taken, if at all, at the same time. It cannot be so highly developed as if it were taken by students who were devoting to it all their time. Yet the professional examinations themselves cannot well go beyond the standards of theoretical knowledge obtainable in the schools. Hence these examinations are not so severe but that —with the aid of crammers— they can be passed by students who omit the school or university work altogether. The number of students attending the schools or classes of the professional societies, or taking law degrees in the universities, is accordingly small compared with the total taking professional examinations. The standard of honor examinations in law at Oxford and Cambridge is high, primarily because "keeping terms" in the Inns, dur-

ing university residence, is a mere formality. Candidates for the bar can thus devote their entire time to their university law studies before they begin their reading in chambers. Here again, however, greater social and professional prestige attaches to academic honors obtained in other fields. The most capable men are apt to postpone their law studies until after they have left the university. In general, institutional instruction in technical law, absolutely non-existent when England lost her American colonies, has not yet been organized in a satisfactory manner.[1]

4. *Distinguishing Characteristics of the Present English System*

To summarize the contrast between Continental Europe and England:

Continental law is the Roman law of the universities, as modified by native law. The universities have accordingly been made responsible, at least in the higher branches of the profession, for both the general and the technical education of lawyers, so far as this can be provided in systematic form appropriate to academic institutions. The remainder of a lawyer's technical training, which can best be provided unsystematically through contact with a practitioner, is secured in this way, and usually after the completion of the university work. These universities were originally self-perpetuating guilds or trade unions. They were semi-independent elements in a so-called "pluralistic" organization of mediaeval society, in which it was not clear where ultimate authority was to be found. Within each nation, however, a slowly developing unitary state finally established its authority over all parts of its territory and over the vested privileges of all individuals, classes and corporations. As part of this general process, Continental universities have been brought under state control. The integrity of the state is thus in no wise threatened by their dominant position in the making of the law and of lawyers.

English law, on the other hand, is primarily native law, the product of its own practitioners, with a relatively slight Romanic infusion. Practitioners, accordingly, under Parliament, have remained in ultimate control of the system by which the legal profession is recruited. They determine the amount and type of the entire education, general and technical, systematic and practical, that lawyers are required to secure; and they test the individual's possession of the requisite quali-

[1] Compare Chapter IX, secs. 1 and 2.

fications. To a very considerable extent these practitioners still constitute, and indeed have increasingly become, self-perpetuating guilds of the mediaeval university type. Since the making of law and the administration of justice are primary functions of political organization, England may thus be said not to have emerged so fully as have the Continental nations from the primitive "pluralistic" phase of government. The possible latent danger to political unity is thought to be met, however, by the fact that the particular barristers who are elevated to the bench are picked out by a minister of the Crown, responsible to Parliament; and that Parliament possesses and exercises the power to change the practitioner-made law by its own statutes.

In accordance with this tradition of the ultimate responsibility of lawyers for their own educational qualifications, the English universities have not only been denied any control over the admission of a law student to practice. They have not even been made directly responsible for providing any portion of his education, in which they participate only as volunteer agencies. In the field of general education they offer much more than the practitioners demand. Their graduates in arts constitute a broadly trained inner circle or educational aristocracy in each of the two branches into which the profession is, for historical reasons, divided. In the field of technical legal education they also offer instruction equally with institutions supported by the practitioners themselves. The conception, however, of institutional instruction in technical law as an essential part of a lawyer's education, whether given in a university or whether given elsewhere, has never thoroughly reëstablished itself in England since the decay of the original Inns of Courts. The pedagogical doctrine that this should constitute a distinct intermediate phase of his preparation, to be entered upon after he has completed his general education but before his practical training begins, is still more foreign to English thought. As a rule, an English student, having secured such general education as he thinks worth while or can afford, proceeds directly into a lawyer's office. Systematized institutional education in the law is then an optional overlay of which he usually avails himself, if at all, at the same time. Indirectly, the universities themselves are largely responsible for the handicaps under which legal scholarship is prosecuted to-day. Oxford and Cambridge provided, in their own field, models of educational *laissez-faire*. The following of these models by the professional societies, with the office practitioner substituted for the college tutor as the core of the

educational system, has resulted in a small attendance, and—judged by the highest American standards—not very intensive work, both in the professional schools and classes and in the university law courses.

CHAPTER II

CANADA

1. *Organization of the Canadian Legal Profession*

ON this side of the water, the fact that Canada came under English rule only a few years before the older American colonies secured their independence was responsible for mutually independent lines of development in the Dominion and in our own country. England found the Romanized French or civil law in Canada in the hands of three technically distinct types of practitioners: *avocats*, *notaires* and *arpenteurs* or land surveyors. In addition to these, she brought in her own barristers, attorneys and solicitors. There was no rule, however, against the exercise of all these functions by the same individual; and in a small frontier community a single type of lawyer, engaged in general practice, naturally resulted. In 1785 these general practitioners were divided, for the first time, into two mutually exclusive branches. Notaries constituted one branch; all remaining recognized practitioners, the other. Future members of each branch were to be admitted after five years clerkship and examination before the Chief Justice or any two judges of the district Courts of Common Pleas. The ordinance applied to the Province of Quebec, which then included the present Ontario, and was an obvious attempt to reconcile the existing English system with the perpetuation of *notaires*, necessitated by the French civil law. In the present Province of Quebec, where except as to criminal matters the civil law is still in force, this division of the profession into the two branches of civil-law notaries and an otherwise completely unified "bar" has been retained to the present day. The former practice conveyancing; the latter combine the remaining functions of English barristers (counsellors) and solicitors (attorneys).

In the other Canadian provinces the introduction of the English common law naturally resulted in attempts both to maintain the distinction between barristers and mere attorneys, and to construct for both branches a system of professional control analogous to that exercised by the English bar. This development occurred in Upper Canada (the present Province of Ontario) in 1797, when the existing practitioners were authorized by statute to form themselves into a Law Society. Under the inspection of the judges as visitors, this society was empowered to adopt rules governing both branches of the profession, de-

fined as "barristers" on the one hand, and as "attorneys or solicitors" on the other. In 1822 the society was incorporated. At present a similar corporation, under various names, exists in every Canadian province.[1] In Quebec, it possesses jurisdiction over the undivided "bar," which does not include civil-law notaries. Elsewhere, the technical distinction between barristers and solicitors (as in conformity with English usage they are now termed) has been preserved. At one time the barrister element in the Ontario society displayed a spirit resembling that of the Elizabethan bar and expelled the solicitors; but now these corporations are everywhere in full control of both branches of the profession, subject to statutory requirements of a period of office clerkship. The distinction between the two branches, however, is little more than nominal. Any solicitor may also become a barrister, either at once or after an intervening period of practice.

The development may be summarized differently, according as we approach it from the point of view of the British Empire, or from that of Canada alone. From the point of view of the British Empire, all Canadian courts may be regarded as lower courts, and these Canadian professional societies exemplify the general English tendency both to obliterate distinctions between lower-court practitioners and to transfer their control from the judges to their own professional organizations. This tendency naturally exhibited itself earlier in the plastic institutions of a sparsely settled colony than in the more rigid social organization of the mother country. From the point of view of Canada as a self-governing body politic, the professional society represents rather the unitary profession appropriate to a new community, organized on the traditional lines of the English bar, but by statute instead of by prescriptive right. The attempted further distinction between barristers and solicitors will then be seen not as a genuine original division, that is now in process of being obliterated. Rather, it was an extraneous feature of the contemporary English system, that failed to take root because it was never suited to conditions in America.

2. *Legal Education in Canada*

The Canadian admission system is accordingly a mere simplification of the existing English system. As a natural consequence the educational system has been organized in the same way as the English, in these three

[1] Compare Chapter V, sec. 1.

essential particulars. In the first place, it calls for an extended period of service as clerk to a practitioner—never less than three years, and longer in the case of those not possessing a university degree in arts or in law. In the second place, the Canadian universities, like the English, provide opportunities for general education in excess of that required by the professional societies preliminary to beginning the clerkship. A distinction of some practical professional importance thus obtains between practitioners who are university graduates and those who are not; though it should be noted in this connection that the expense of obtaining a legal education, coupled with the longer clerkship required of non-graduates, makes the Canadian bar as a whole more exclusive than our own, and thus narrows the chasm between these two classes. In the third place, such systematic instruction in technical law as is provided is intended, as in England, for those who are simultaneously serving their office clerkship. Class sessions are regularly held in the early morning and late afternoon. To repeat the figure already used, the instruction is an overlay upon, rather than a preliminary to, the student's practical training, and hence cannot be given the same theoretical development that is possible and likely—for good or for bad—when professors command the entire time of their students.

Such differences as exist between the Canadian and the English systems of legal education are subordinate to the above essential points of similarity, and concern principally the respective rôles played by the professional societies and by the universities in providing systematic instruction. In general, one agency or the other operates alone in each province, instead of both concurrently as in England. In the Province of Ontario the strong old Law Society of Upper Canada, which has occupied its own building, Osgoode Hall, since 1832, inaugurated lectures in 1855 and a law school in 1873.[1] Since 1889, by a quite remarkable departure from prevailing custom, attendance at this school has been compulsory upon all who desire to be admitted to the practice of the law. In the remaining provinces, on the other hand, the universities have secured a somewhat stronger foothold than in England. The professional societies are disposed not to offer instruction when a local university is willing to undertake the work. In Quebec the importance of an adequate knowledge of the French civil law is emphasized by a requirement that law students shall attend a local university, and that a law professor of each university shall be placed on the profes-

[1] Compare Chapter VIII, sec. 1.

sional examining boards. In Nova Scotia and New Brunswick the local universities are favored in a different way. In return for representation of the professional societies on the university examining boards, students who secure the university law degree are exempted from the professional examinations. This participation of the regular admitting authorities in the tests leading to the degree, and the fact that the privilege is enjoyed in each province by only a single university, distinguish this arrangement from the justly discredited "diploma privilege" possessed by certain American law schools.

3. *General Characteristics of the Canadian System*

These concessions made to the universities in particular provinces do not, however, affect their general subordination to the practitioners. The Canadian system of legal education and admission to the bar, like the English, is strong on the side of practical training and professional spirit. Its weakness lies in the obstacles that it places in the path of legal scholarship, with all that this means for the future growth of the law. Practicing lawyers with their necessary and proper respect for precedent tend inevitably to look backward rather than forward. Ultra-conservative practitioners, through their control of the student's examinations, check the development of the curriculum, at the same time that through their control of his working hours they prevent him from doing justice to the curriculum as it already is. Finally, Canada has not solved the fundamental difficulty that besets all efforts to adapt the ancient profession of the law to modern ideals of popular self-government. No more than in our own country are these two demands of the democratic state fully met: namely, that its lawyers shall be at once educated specialists and yet not too far removed from the common people; that their course of preparation and conditions of admission shall be at once rigorous and yet not beyond the reach of the average man; calculated to produce broadly and thoroughly trained experts, to whom clients can resort in full confidence that without undue delay or expense they will be honorably and competently served, and yet providing an opportunity to all elements of the community to be adequately represented in the lawyer class, privileged by law to exercise the primary governmental function of administering justice.

CHAPTER III

THE UNITED STATES

1. *Relation of American to English Law*

IN our own country, the political separation from England naturally suggested a corresponding break between English and American law. Except as regards the structure of government, however, the break in legal continuity that actually occurred was not by any means so complete as was probably then generally anticipated, or as is to-day commonly assumed by those without legal training. Our political law was formulated in our constitutions, state and federal, into codes that represented a blend of the governmental organization already enjoyed by us as English colonies with a theoretical principle derived from French philosophy. This was the famous doctrine of the separation of powers, which assumes, in the first place, that all governmental activities can be classified under the three heads of executive, legislative and judicial; and demands, in the second place, that these three powers shall be lodged in three corresponding departments of government, to be kept independent of one another so far as possible. In the discussion that attended the adoption of these constitutions, as well as in such instruction in our system of government as has since then been provided in our common schools, the constant reference to the legislature as the legislative or law-making organ of government led to a very natural misapprehension. Undoubtedly the bulk of our people, when the process of organizing the new government was completed, felt that the state legislatures and the federal congress made all the remaining law, and that the judges merely applied it in such controversies as arose. This naïve confusion between the powers that our legislative bodies, under constitutional limitations, might exercise, and the powers that they actually have exercised, has persisted to the present. Citizens of foreign origin, coming from countries where the legislatures really do make the entire law, except as to subordinate portions of it that merely supplement the fundamental codes, are peculiarly liable to fall into this error. The misunderstanding, however, is by no means confined to them. It constitutes one of the reasons why the American public can be much more easily interested in securing legal reforms through action by the legislature, than through improvements in the quality of practicing lawyers and judges.

The actual situation was and is quite different. Parliament, at the time we secured our independence, had reduced only a small portion of the old common or judge-made law of England to statutory form; and our own legislatures did not at that time adopt, and except in a very few states have not since then adopted, comprehensive legal codes. The greater part of the law, accordingly, that the judges were to administer did not exist in native form. There was a period during which many judges tried to be "one hundred per cent American" and to decide each case according to their own pure light of reason, without dependence upon English precedents either of method or of substance. It was not long, however, before both the traditional method of English law-making, and much of the traditional content of English law developed by this method, were restored to American law. Decisions came to be regularly reported. Judges revived the English custom of cautiously leaning upon precedents laid down in prior decisions, instead of deciding each case by itself. Finally, in view of the paucity of reported decisions in their own jurisdictions, they were obliged to look further for authority. They were driven to use the law of other American states and of England itself. The already existing English law, mainly as it had been developed by English judges, but including also certain important acts of Parliament, as the whole existed prior to the Declaration of Independence—and in particular as it was accessible in the convenient form of Blackstone's *Commentaries*—came to be recognized as still in force in this country, in so far as it was applicable to local conditions and had not been subsequently modified by ourselves. In some states the judges introduced this law of their own accord, in the absence of legislative direction as to what sort of law they were to apply to controversies before them. In other states the legislature itself formally directed them to regard it as in force. By one or the other process the continuity of Anglo-American law was thus largely restored, so that together with England and its self-governing colonies we now form part of one great common-law system, contrasted with the civil-law system of Continental Europe and Latin America. In each of our states the original common law is gradually being eaten away by local statutes that sometimes merely restate, but often also modify, principles of law enunciated by the courts. Local divergencies also exist in the chains of accumulating precedents that are recognized as authoritative by the courts themselves. Yet notwithstanding all this, the theoretical unity of the common-law system—

and the practicing lawyer's indefatigable search for prior authority—is carried so far, that if an English or Colonial case—even a contemporary one—can be found which presents points of similarity to one arising in an American court, the American lawyer may appropriately bring this case to the attention of the judge, and the judge may appropriately cite this foreign precedent as a ground for determining the rights of American litigants. Similarly, in English and Canadian courts American judicial decisions are cited.

In the nature of things, however, recent foreign precedents are now rarely applicable to cases that arise under American law, modified as this has been by our own local statutes and by long-established lines of local decisions. For practical purposes the unity of Anglo-American law may be said to consist of two features. In the first place the methods by which it comes into existence are everywhere identical. Instead of being, like modern civil law, primarily a product of the legislature and as such binding upon the courts, it becomes law only to the extent that it is declared to be so by the judges. In making this declaration the judges are by no means free. They are bound both by their own precedents and by such legislation as has been enacted, whether in the form of statutes or of constitutional provisions. The confusion, however, both in precedents and in legislation, gives them very considerable latitude within which to determine what shall be and what shall not be regarded as law. This peculiar relation of common-law judges to legislation obtains even in those American states which have attempted to codify their entire law. It expresses itself not merely in the familiar form of declaring statutes unconstitutional, but also in a tendency to interpret legislation, of undoubted constitutional validity, in the light of old common-law precedents.

This traditional right of the Anglo-American judge to determine the extent to which he will administer legislation, by appeal to authority older than this legislation, is of course not to be confused with the power possessed by all judges to supply omissions or to reconcile contradictions in the text of any particular legislative act, nor yet with the tendency of judges under any legal system to respect prior decisions in regard to matters within the scope of their authority. In accordance with a principle that operates universally in bureaucratic departments of government (among which courts of law may, with no disrespect, be classed), civil-law judges respect, in practice, decisions made by their predecessors. It is true that this has not ripened on the European Conti-

nent into the rigorous English principle of *stare decisis*—the judicially formulated doctrine that a judge is bound to abide by the decision of his predecessor, even though he may personally believe that the decision was wrong, and must leave it to the legislature to establish a better rule for the future. But even if it should so ripen, it would not affect the inherent subordination of the civil-law judge to all preëxisting legislation. On the other hand, the extraordinary powers possessed by English and American judges, not only in litigation between individuals but even as between individuals and the state, would obviously be increased in case they should throw over the doctrine of *stare decisis* and decide cases frankly on grounds of public policy. Similarly their independent powers of law-making are not abolished when—as an alternative method of remedying the confusion and the archaisms of judge-made law—legislatures enact comprehensive codes purporting to displace it. For from the point of view of common-law judges, the provisions contained in these codes do not become genuine "law" until they have been actually enforced by the courts in concrete cases. What our courts enforce is law, what our courts do not enforce is not law, irrespective of the moral or political obligation they may be under to make it so. The familiar epigram, "When a doctor makes a mistake, he buries it; when a judge makes a mistake, it becomes the law of the land," is a striking, if unsympathetic, way of expressing the final check which the judges possess upon the making of law in England and America.

The second respect in which Anglo-American law may be said to constitute a unitary legal system is the prevailingly similar content of its widely scattered local branches. Necessarily, however, these branches have grown somewhat apart from one another, with the lapse of years. In so far as the differences between contemporary English and contemporary American law are less marked than are the differences—easily exaggerated—between them and the similarly divided branches of civil law, the general resemblance is due to their historical continuity, as branches growing out of a common trunk, rather than to a continuing mutual interdependence. Because of their common origin, English and American law share in common certain great fundamental principles, unknown to the civil law. But because of the subsequent independent development of the law in the two countries since their political separation—and particularly because of the modifications effected in the judge-made law by the action of mutually independent legislative bodies

—it is not often that an American judge has before him a knotty point, for the solution of which, on the one hand, no American precedent can be found, and to which, on the other hand, an English precedent is strictly applicable. With substantial accuracy, accordingly, it may be said that our contemporary American law, although typically English in respect to the process by which it is made, is English in its content only in the sense that its historical basis is found in the older English law, as this existed before we became a separate nation. We have developed our own lines of precedents, and our own statutes, which resemble those that make up the contemporary law of England mainly because two peoples of similar origin, attempting by similar methods to adapt an identical older law to the similar problems that confront them in modern life, are likely to reach similar results. The occasional use that English and American judges make of one another's decisions may from this point of view be regarded as mere imitations or borrowings, such as constantly occur also in the drafting of legislation.

So far as concerns its content, then, Anglo-American law, as developed in our own country, has pretty well split off from that of England. In addition, our system of government has exposed it to the danger of disintegrating still farther into separate systems of law for all the states of our Union. Each state has its independent courts and legislature, still responsible, in spite of the expanding jurisdiction of the federal courts, for the bulk of our law. We are in a much more unfavorable situation, in this respect, than our Canadian neighbors. Their Supreme Court, acting as a court of appeal from the provincial courts, standardizes the judge-made law of the Dominion, and the further right of appeal from Colonial courts to the judicial department of the Privy Council in England promotes unity, subject to legislative variation, in the law of the entire Empire. The Supreme Court of the United States, however, so far from possessing this general appellate power, does little more than add to our forty-eight state systems a forty-ninth body of law covering matters within the special jurisdiction of the federal government.

This danger that American law might disintegrate into local fragments has, on the whole, been averted by the respect which the lawmakers of each state accord to the law of other jurisdictions. In the domain of judge-made law, the decisions of other state courts, or of the Supreme Court of the United States, are more than mere guides. They

are treated by the courts as possessing actual authority as precedents, subordinate only to that possessed by a well-established line of decisions in their own states. Much more commonly also than foreign decisions they are applicable to local cases. This is because our states, in closer contact with one another than with Europe, have had relatively similar problems to face, and because even in the field of legislation they copy freely from one another. Both their judge-made law and their legislation, accordingly, have been kept more or less similar. Thus we have managed to maintain something resembling a body of characteristically American law, the internal variations in which are less marked than is its general divergence from the law of England. Or, more accurately, the history of Anglo-American law in this country may be sketched as follows: For a time, because of the character of our political organization, American law was actually split into local fragments. Subsequently, the field from which precedents were drawn was extended beyond the political boundaries of nation and state. By this means our law has not only been reattached to the parent trunk, but it has also been partially reintegrated.

This method of counteracting the natural tendencies of our federal system of government is, however, at best a clumsy one that not only does not fully accomplish the result desired, but also introduces certain positive evils. Notwithstanding the respect paid by the judges of each state to the decisions from other jurisdictions, localized and mutually inconsistent lines of development have persisted. It follows that the large number of courts from which conflicting precedents may be drawn has served as much to confuse as to standardize the law in any particular jurisdiction. The law of each state is more uniform with that of other states than it would have been had there been no borrowings from these. But within itself it is also less coherent.

In some ways, accordingly, the present condition of American law resembles that of European Continental law before university legal scholars substituted, for the varying and often arbitrary rules administered by practitioners in the courts, their own more intelligible and more logically defensible system. One of the developments that will be traced in the following pages will be the efforts of certain of our own legal scholars to perform a similar service for the law of America. A body of generalized national law, deduced in a critical spirit from the best practices of the various courts, is being slowly built up by these scholars. Not corresponding in its entirety to the law as actually adminis-

tered by the courts in any single jurisdiction, it does not fall within the strict technical definition of "law" that is traditionally current in England and America. It is not, that is to say, in itself "a body of rules enforced by the courts." It constitutes rather, from this point of view, a fund of theoretical doctrine, which, whether embodied in texts or in principles inculcated in practitioners in other ways, is often welcomed by the judges as a useful guide when, in their decisions, they are obliged to determine the actual law of their jurisdictions. In proportion as the judges can and do draw upon this fund of theory, the mechanical inconveniences of our divided system of courts are thus more easily surmounted and the law of the separate jurisdictions is made more uniform. From the broader point of view of Continental Europe, however, where rules formulated by legal scholars, whether or not they are enforced by the courts, partake of the nature of genuine "law," we may define this scholarly product as a slowly developing body of national law, which, to the extent that it differs from the local law of the judges, is struggling for mastery with it. Should university law schools or other institutions in which this national law is being cultivated ever be accorded a recognized responsibility for the education and testing of applicants for admission to practice, exercised independently of the judges or of other practitioners, this will mean that the American state has recognized, or in the technical language of jurisprudence has "received," scholars' generalized common law in much the same way that their elaborated Roman law became the law of Continental Europe.[1]

2. *Influence of our Political Philosophy upon the Organization of the Legal Profession*

We are, however, a long way from any such fundamental change in our conception of law as that just suggested. Meanwhile control of those who are to practice what is still practitioners' law has naturally remained with the practitioners, here as in England and Canada. There are notable differences, however, in the way in which this control is organized. Our American system of bar admissions owes its present form, in the first place, to the manner in which English practitioners' control was exercised during the period when the thirteen original states were still English colonies; and in the second place to the inde-

[1] Compare Chapter IX, sec. 2; Chapter XI, sec. 1; Chapter XIII, sec. 4; Chapter XXV, secs. 1 and 2; Chapter XXIX, sec. 2; Chapter XXXI; Chapter XXXIII, sec. 3.

pendent influence exerted by our own native legislation. The England of the seventeenth and eighteenth centuries provided the traditional basis upon which our own organization of this branch of governmental activities has been built. Our colonial and state legislative organs, however, have been prevailingly more responsive to popular demand that the special privileges enjoyed by professional lawyers in the administration of justice shall not be placed beyond the reach of the average man. This attitude has led us—on the whole, in increasing measure—to weaken or even to repudiate traditional features that English and Canadians have come more and more to emphasize.

At the time when America was colonized, admission to practice in English lower courts was granted by the judges. As soon, therefore, as our colonists abandoned the attempt—made in several colonies—to prohibit professional lawyers altogether, there was provided, by legislative process, the same method of admission to their local courts; for, from the point of view of the British Empire, all such courts, the highest as well as the lowest, were subordinate to those at Westminster. In a few cases attempts were made, as in England, to limit attorneys to a specific number, and with the same lack of success. There was considerable variation as to the particular branches of the judicial organization in which the power of admission should be lodged. A centralizing policy, for instance, was favored by the home government; and since the governor usually exercised judicial as well as legislative and executive powers, he accordingly sometimes appointed attorneys himself. Usually, however, this was on the recommendation of a court or judge, as in New Jersey to the present day. In whatever ways the systems introduced into the different colonies varied in detail, they all constituted, in this subordination of lawyers to the judicial power, a free adaptation of the home model for miscellaneous or lower practitioners. Some attempts were also made to construct an upper branch of the legal profession on the same basis, but to a considerable extent this element among the practitioners was represented by the existing English bar. English-born barristers could not ride on circuit to try cases in America, but southern planters frequently sent their sons to England to secure a legal education and admission to the bar from the Inns of Court. Upon their return these constituted the social aristocracy of the profession.

With the elimination of the English-trained barristers there were left to us only the judicially appointed or judicially admitted practi-

tioners. As in England and Canada, the distinction between the terms "appointment" and "admission," to describe the selective function performed by the judges, represents merely a slight shift in the point of view. "Admission" came everywhere to be preferred in proportion as it was realized that these practitioners, not being limited in number, were not precisely governmental officials, but constituted rather a class or order, vested with special privileges in the administration of the law. The further step, taken first in Canada and later in England, of transferring control over admission into this order from the judges to the practitioners themselves never received legislative sanction in this country. During the Colonial period the ideal of professional independence operated in a different way. These judicially admitted practitioners came to be regarded as themselves constituting "the bar." In portions of New England, and possibly in New York City, the judges permitted the bar of each county to exercise actual control over its own membership. In New England this practice, which resembles the method by which English barristers seem originally to have secured their traditional privileges, survived the Revolution. An interesting relic of it is to be found even to-day in Connecticut in the control retained by its county bars over the moral qualifications of applicants.

The institution of a self-perpetuating class, however, enjoying special governmental privileges, was entirely repugnant to American efforts to build up unitary democratic states possessing paramount authority over what may be loosely described as feudalistic survivals. Our legislatures, so far from sanctioning the control of admissions by those already admitted, were only too ready to discharge this function themselves, in the form of admitting individuals by special legislative act. In so far as they avoided this exercise of pure political favoritism, and recognized that the power of admitting lawyers to practice might better continue to be exclusively exercised by the courts, they did this because they regarded the judges as state officials, whose retention of this power therefore did no violence to the integrity of the governmental machine. The attempted development of a virtually independent bar, under cover of this judicial control, was contrary to the spirit of our developing institutions. The general tendency of our people has been in the opposite direction of taking steps to prevent the judges themselves from becoming too independent, in their exercise of their admitting power as in other matters. Even so, the system of independent bar control might have lasted in New England longer than it did, had the bars

exercised their control in a broader spirit. The requirements they exacted for admission to their privileges were in some cases so severe as to justify the suspicion that they were more interested in fostering their own monopoly than in serving the state. The reaction against Federalist politicians was a factor in inducing the legislatures to sweep away the entire system.

Since then the power of admitting lawyers to practice has been universally regarded in this country as a function of the bench rather than of the bar, and has been lodged in whatever part or parts of the judicial system the legislature has picked out. Under the principle of the separation of powers, it has even been regarded by the courts of some states as a part of the judicial power, in their independent exercise of which the courts cannot, under the state constitutions, be controlled by the legislature. This doctrine, however, is of relatively modern origin. It is confined to the courts of a few states and has been expressly repudiated by others. It has not affected in any essential respect the development of our systems of bar admission in the past; and in view of the ease with which constitutional amendments can now usually be secured, it is not likely to do so in the future.

Democratic desire to keep the privilege of practicing law within the reach of the average man accordingly reinforced the natural tendency of a unitary state to keep governmental functions under its own control, and so prevented one feature of the traditional English system—that of a self-determining bar—from securing permanent lodgment in this country. The same democratic impulse combined with the exigencies of a newly settled community to prevent the English distinction between attorneys and counsellors from taking root; and combined later with the natural force of inertia to prevent official recognition of any other distinction between different types of practitioners. Here again a start was made. Both in jurisdictions where the movement toward an independent bar had started, and elsewhere, attempts were made to differentiate native barristers or counsellors from mere attorneys. The English line of cleavage, however, between practitioners who appeared as advocates, and practitioners who possessed other privileges in lieu of this, represented an artificial specialization that was not suited to the conditions under which law was practiced here. In this particular form the attempt to distinguish between practitioners of different types may be said to have died a natural death, here as in Canada. A more promising method of differentiation, which occasionally made use of

this counsellor-attorney terminology, took the form of distinguishing between practitioners on the basis of the courts to which their privileges extended. Solicitors in chancery and proctors in admiralty, although occasionally mentioned, probably never had an independent existence. As in England, practitioners of one court could in general secure admission to any other. The English distinction between attorneys of King's Bench and of Common Pleas, however, was still a genuine one. Several of the colonies introduced an analogous distinction between lower-court and upper-court practitioners. Two varieties of this method of differentiation existed. In Virginia, until 1787, the lower and the upper bar were kept rigorously distinct. A relic of this division survived until 1849, in the shape of a prohibition upon the carrying up of an appeal by the original attorney. Elsewhere, a graded, as distinguished from a divided, profession was built up; that is to say, an interval of practice in a lower court was required before an attorney could practice in the upper court as well. Weakened forms of this once common attempt to introduce official ranks or grades into the profession still survive: in New Jersey, in the shape of a technical distinction between attorney and counsellor; in Pennsylvania, in the shape of lower local bars—in Georgia, in the shape of higher appellate bars—technically independent of the general bars of these states. In New Jersey, the weakening has taken the form of a whittling away of the special privileges reserved for the counsellor; in the other states, it consists in a failure to require a period of practice in the lower court before promotion can be secured to the upper.

All these distinctions naturally flourished most in states where the democratic impulse had not begun to operate. As this made itself felt, they were identified as devices intended to help make the bar inaccessible, and were either formally abolished or reduced to the empty forms just described. There is no inherent conflict between the ideal of throwing widely open the official privilege of practicing law professionally in the courts and official recognition of different types of practitioners, each enjoying its special privileges in this respect. The democratic wave, however, sweeping away the internal barriers that protected particular sections of the profession, converted it as a whole into an officially undifferentiated and, as it were, flattened-out profession. Since then we have become so accustomed to thinking in terms of a unitary bar that we are prone to forget that this unity has long since become only a legal fiction, not related to the facts of legal education and of legal

practice. We have not even tried to introduce among our lawyers official distinctions corresponding to the wide differences that actually exist in their preparation and subsequent professional activities. Our law of bar admissions is in this respect far behind the stage of development reached by our law governing licenses to practice the healing arts. That law does not contemplate a uniform course of preparation, and the passing of identical official examinations, by physicians, dentists, apothecaries, nurses and midwives.

Our political philosophy, accordingly, worked upon inherited legal forms to produce the two important results noted. A system of judicial appointment (or admission) of practitioners, in force in the England of the eighteenth century only for the lower ranks of the profession, and subsequently abandoned even for them, has been preserved as the uniform method by which all practitioners are admitted to practice in all of our states. And not only was there lost, along with the special self-governing organization of the old English bar proper, the notion that their special privilege of advocacy might properly be restricted to one differentiated portion of our legal profession; but also functional distinctions of any sort, such as then still divided their miscellaneous lower practitioners, have been fused in the common mould of the American "attorney and counsellor-at-law," privileged to practice all branches of his profession in all courts equally.

In addition, and for the same reason, the process of securing admission from the judges was made easier than in England. This effect of our democratic proclivities manifested itself in the two forms of weakening or abolishing the requirement of a five years articled clerkship and of postponing the development of an adequate examination system. Development in these respects proceeded differently in different jurisdictions and at different times. The movement has not been entirely in one direction. Broadly speaking —ignoring, that is to say, temporary reactions in particular states and a prevailingly more liberal policy in the newer and more sparsely settled jurisdictions—the general tendency up to the Civil War was to make admission to the bar more and more easy. Since then there has been considerable organized effort, which has been attended with partial success, to remedy the extreme laxity of the earlier period. The details will be found in subsequent chapters.[1] The points of general significance to be noted here are, first, the relation of this movement, in both of its successive phases, to simi-

[1] Part II (Chapters IV–VIII).

lar movements affecting other branches of our governmental organization; and, second, its effect upon the development of law schools.

3. *Relation of the Public Profession of the Law to Governmental Organization in General*

As bearing upon the first point it is especially significant that even when the democratic impulse expressed itself in its most extreme form, namely, in actually abolishing all educational requirements for lawyers, it never went so far as to do away with the institution of "the bar" as a special governmental class or order, enjoying the exclusive privilege of practicing law professionally in the courts, and thus distinguished from the general run of citizens who may appear only in their own behalf, or sometimes in behalf of their friends, in individual cases. In four states the judges were at one time obliged by the legislatures to admit to their bar, as fully privileged professional practitioners, citizens or voters of good moral character, without imposing any educational tests; but the formal process of admission was preserved, including examination as to other than educational attainments. In the language of the single jurisdiction (Indiana) where this extreme provision still survives, because it found its way into the constitution of the state, "Every person of good moral character, being a voter, shall be entitled" — not to practice, but — "to *admission* to practice law in all courts of justice." The distinction is a not unimportant one, even from a practical point of view; it is of the utmost significance as a guide to the more or less consciously formulated political philosophy that has dictated our varying methods of fitting lawyers into our governmental system. Neither the way in which we have handled this bar admission problem in the past, nor the type of reforms that we may hope to introduce in the future, can be understood, unless it be clearly grasped at the outset that our lawyers have never been regarded by our lawmakers as constituting, like our physicians, a private profession which, with the expanding powers of the state, is being brought more and more under governmental control. The development of our bar admission systems has not taken the form, as has that of our systems of medical licenses, of mere social protection against the unfit holding themselves out as properly qualified practitioners of a recondite art. Our legislatures, because of their interest in other phases of the problem, have been slow to recognize that this protection is as necessary in

the case of practitioners of law as of medicine; but at least there has never been any question as to the regulation of lawyers being a proper function of the state. By an unbroken tradition, handed down from the first establishment of English courts, our lawyers have always been recognized as constituting a branch of the government to be treated as such; not a private but a public profession.

This being understood, it is easy to account for the otherwise inexplicable vagaries indulged in by some of our states between the American Revolution and the Civil War. The need of trained experts in the administration of justice stood on all fours with the need of trained experts in other departments of government, but here, as in the civil service, this was by no means the only desideratum that seemed important to those who were endeavoring, however blindly, to build up our institutions on an enduring popular basis. A generation that was interested primarily in throwing open public offices by denying the quasi-vested rights of functionaries, by abolishing property qualifications, by shortening terms of official tenure, was not yet ready to attack the problem of making its public servants competent. Rather, it was inclined to view with suspicion any regulations that tended to place obstacles in the path of those who aspired to enter the public service. In the case of lawyers, it identified requirements of fixed periods of preparation, followed by rigorous examinations, as part of the general restrictive rubbish which it was trying to clear away. Thus somewhat ruthlessly the bar, like the civil service, was popularized at the cost of efficiency. Similarly, after the Civil War, when this task had been pretty thoroughly accomplished, it was natural that attention should be given to the task of restoring such educational requirements for the public service as are compatible with the ideal of not making it too difficult of access for the average man. In the general history of our political development, the agitation for the improvement of our bar examination systems is thus seen to constitute a movement parallel to that of civil service reform. Neither movement can accomplish all that its promoters hope, if, in the justified emphasis that they place upon the need of trained experts in our public life, they lose sight of the underlying ideal to which our people are now committed.

Even those who do not sympathize with this ideal must recognize its importance as a practical factor in determining standards for admission to the bar. Its tenacity cannot be appreciated unless its nature is clearly understood. It is not the expression of an easy-going social

philosophy that denies to the state the right to regulate, in the interests of all, the conditions under which individuals may in general earn their livelihood. It is grounded in a militant political philosophy that sees in the administration of justice a primary function of the state, and demands that those who earn their livelihood in this particular way shall be regarded, not as private citizens, but as public servants of a democracy. From this point of view, adequate preparation for the discharge of their responsibilities is as requisite for lawyers as for those engaged in private professions; but something else is necessary as well: namely, that the opportunity to share in these responsibilities shall not be unduly restricted. Arguments in favor of low professional standards, in general, are so easily refuted that this special complication which attaches to the public profession of the law is too often overlooked. In particular, those who are academically trained are liable to institute a misleading analogy between physicians and lawyers. Because, historically, these have been equally regarded as "learned professions," the distinguishing political characteristics of practicing lawyers are ignored. The real force of the democratic contention is thereby obscured. Our people look to schools of medicine to supply medical service, and ask only that it shall be good, both in its theory and in its practical application. They purport to make their own law, however, and are correspondingly suspicious of any effort that, under guise of bettering the law or its administration, may seem to weaken their control.

Considerations that have no bearing, accordingly, upon the regulation of the medical profession bulk very large in determining the policy of the state in organizing its public service. The proper organization of the legal profession is not, like that of the medical profession, primarily an educational problem that might be solved under any form of government in much the same way. It is primarily a part of the general problem of political organization, the solution of which in a democracy presents peculiar difficulties. It is only by approaching it from this point of view that we can understand what has been done, what can be done, and what ought to be done to make the American legal profession an efficient instrument of popular government.[1]

[1] Compare Chapter VII, secs. 1 and 3; Chapter VIII, secs. 3 and 5.

4. *Effect of Weakened Bar Admission Requirements upon the Development of Law Schools*

The second point of general significance to be noted in connection with the weakening of American bar admission requirements is this: The laxity of regulations designed to keep control of the legal profession in the hands of judges and of practicing lawyers provided the American college with an educational opportunity such as English and Canadian universities have never possessed.

Even prior to the Revolution, some of our colleges had begun to evince a tendency to escape from the narrow formulas of their original classical and mathematical courses, and to embark upon professional or vocational work. Medical schools had already been established by Benjamin Franklin's College of Philadelphia and by old King's College in New York City, the ancestors of the present University of Pennsylvania and of Columbia University. After the Revolution, this vocational impulse, broadened now to include legal education, continued in the middle Atlantic states, and through the influence of Thomas Jefferson was manifested also by William and Mary College in Virginia. In this state, for a combination of reasons — the relative unimportance of manufacturing and trading interests, the contempt felt by the Colonial aristocracy for native attorneys and the libertarian policy of Jefferson himself — the requirements for admission to the bar were already so weak that William and Mary's law department had no difficulty in securing its start at once. Subject to the vicissitudes caused by the Revolutionary conflict, it was in operation from 1779 until the Civil War. Its later and more successful rival, the University of Virginia law school, owed its origin to the same combination of personal and social influences, and, except in a strictly organic sense, is really a continuation of this, the first American law school.

In the middle states, on the other hand, the requirements for bar admission were for many years too severe to make possible the successful inauguration of institutional instruction in vocational law. After the Revolution, and again during the first quarter century after the War of 1812, several colleges attempted to expand elementary legal instruction, intended merely as a part of liberal education, into genuine professional schools, but all failed. Finally, in New England, in addition to the obstacles imposed by the early bar admission requirements, the colleges themselves, prior to the War of 1812, were less ready to broaden their activities beyond their traditional scope of non-voca-

tional education. Harvard and Yale lagged behind the University of Pennsylvania and Columbia in attempting to establish professional schools, either in law or in medicine.

The special obstacle in the northern states, during these early years, was the still prevailing requirement of a period of clerkship. What saved the situation was not merely that in most cases this requirement was already weaker than the corresponding English provision, as regards its length and its failure to call for formal articles of apprenticeship. Even more important was the fact that attempts to limit the number of clerks who might study under one attorney were soon abandoned. This paved the way fcr the thoroughly natural development of a private attorney's law office into a private class or school—that conducted at Litchfield, Connecticut, by Judge Tapping Reeve, and by his successor, Judge James Gould, from about 1784 till 1833. This was not the first law school in America, but it was the first law school of national reputation that taught students from all parts of the country.

The success of this institution led not merely to the founding of similar private law schools in other states. Coupled with the earlier development of independent medical schools conducted by practitioners, it also proved to be influential in determining the manner in which university professional work would eventually be organized throughout the country—more so than Jefferson's two Virginia institutions. These had attempted to introduce the European idea of professional faculties strictly coördinate with faculties offering instruction in the liberal arts. When Harvard and Yale, however, entered the field of professional education—as they wisely postponed doing until they were reasonably certain to succeed—they each preserved their old college unchanged. They merely attached more or less loosely to it professional departments controlled by practitioners. They thus exemplified a compound type of university organization which, although recently somewhat modified in individual instances, furnished the model to which American institutions of higher learning still pretty generally conform: at the core, a college of liberal arts; around this, a circle of vocational schools in varying stages of administrative dependence. In both cases legal education was undertaken later than medical education—at Harvard in 1817, and at Yale in 1824. The Harvard law school had no success until it called in the acting head of a private law school of the Litchfield type to take charge of its routine work. The

Yale law school was for many years an independent institution only loosely affiliated with the university.

Expansion by one or the other of these two methods—by the new establishment of a law department conducted by practitioners, or by taking some already established school under the college wing—became the typical process by which American colleges succeeded in securing a foothold in legal education. With the progressive weakening of bar admission rules, this step in the conversion of a "college" into the greater dignity of a "university" was possible everywhere, and was very commonly taken. The few institutions that had embarked upon the study of law under the slightly earlier Jeffersonian influence were eventually obliged to conform to this prevailing model. Law degrees were established, and for a time the tradition continued that such degrees could properly be conferred only by a university. This contributed to the replacement of technically independent schools by more or less spurious unions. Although the general tendency has been for these unions, once established, to become more intimate, in some cases development in this direction has been arrested by peculiar contracts or types of university organization. Later it was discovered that by appeal to the legislature, or under general incorporation acts, any incorporated medical school or law school might obtain the privilege of conferring degrees. A second crop of independent law schools then arose. Still later other organizations entered the field, notably the Young Men's Christian Association, as an incident to its general educational development.

At present, therefore, in addition to law departments that are attached to colleges or that form parts of more or less genuine universities, there is offered an abundance of institutional work leading to a law degree. Opportunity to engage in legal education has been extended to the colleges, but it has by no means been confined to them. Over-rigorous apprenticeship requirements stunted the development of legal education in England; the decaying remains of these requirements produced in this country a soil favorable to a rank growth of law schools.[1]

5. *General Points of Resemblance among American Law Schools*

Apart from their differences in organization, these law schools are in some ways very much alike and in other ways quite unlike one another.

[1] Compare Parts III, VI and VII (Chapters IX–XVIII, XXIII–XXXI).

They are alike, in the first place, in the position—peculiar to this country—that they occupy in the general system of bar admissions. The systematized instruction that they offer does not constitute, as does similar instruction in Continental Europe, a definite phase of the entire course of preparation that is obligatory upon at least a part of the prospective bar. Nor yet is it, as under the English rules for the admission of solicitors, a mere optional overlay upon office work, that if taken at all is taken concurrently with this practical training, except sometimes during the first year. It is no more necessary here than it is in England for those who wish to be admitted to practice to take any law school work, if they can in other ways secure the preparation needed to pass the professional examination. If, however, they do attend a law school, then the training they secure there is almost universally assumed to be all the training they require. In a very few states such students, or such of them as are not college graduates, are required to spend also a little time in a law office, not concurrently with their law school work, but during an additional period. But even in these cases the benefits derived from office work are not tested by the bar examinations. Everywhere the law schools are regarded as competent to provide all the preparation that the state admitting authorities think it worth their while to ensure by formal tests; and in a not inconsiderable number of jurisdictions, if the law school authorities have declared themselves satisfied by conferring upon the student their own degree, the state will even waive its own examination. Law school work in America, in other words, has been transformed from an optional overlay into an optional substitute for office training. The freedom that is technically given to the applicant not to take any systematic instruction is a direct heritage from England. The general understanding that if he does go to a good law school and makes good use of his opportunities, that is all he needs to do, represents the form which the English tradition of training under an individual practitioner naturally assumed when this individual, with his maximum quota of two articled clerks, was allowed to expand himself, as it were, into a group of practitioners undertaking to instruct an indeterminate number of students.

This is the technical position occupied by law schools in our bar admission systems. Their actual importance has been greatly increased by the growing complexity of our law, and by the movement since the Civil War to stiffen bar examinations. For the greater complexity of the law renders systematic study, as distinguished from practical fa-

miliarity with the law in its actual operation, an increasingly essential feature of a student's preparation. Conceivably a conscientious attorney might give to his student clerks both these features of a complete legal education. Attorneys, however, who have time and inclination to teach law systematically can do this most easily and effectively in a law office that specializes in just this sort of thing—in a practitioners' law school, in other words, which naturally draws to itself this type of man out of the law office proper. Furthermore, it is not possible to frame bar examinations intelligently except on the basis of the curriculum and standards provided by these same schools. The law schools therefore dominate the situation. Students may attempt to prepare themselves to pass the bar examinations without attending a law school; but it is becoming increasingly difficult for them to succeed. Conditions, of course, vary greatly in this respect in different parts of the country. In the more sparsely settled states, where local law schools have not developed, the office student is still common, and in all states which prescribe a definite period of preparation, a combination of unsuccessful school work and so-called office work plagues the examiners. The general tendency, however, is clearly in the direction of making a law school education the only practicable method of securing the preparation requisite for legal practice.

The general character of the preparation has been profoundly modified by this shift from office to school. The tradition that a law school education is all-sufficient has survived the partial expulsion of active practitioners from its staff. Furthermore, a law school, even when run by practitioners, cannot as a matter of fact duplicate the work of an office engaged in actual practice. Thus we are in a fair way of losing entirely the practical training secured under a practitioner, that was once assumed to be the only logical means of preparing students in Anglo-American law. Even its remnants are not usually regarded by the law schools as worth preserving, now that they have virtually preempted the entire field of legal education. Moot courts, introduced in imitation of those in the old English Inns, and "practice courses" are among the devices by which they conceal from themselves and others the necessarily theoretical character of their instruction.

A further point of likeness between the schools consists in the strong family resemblance that their curricula, even apart from their inherently theoretical character, bear to one another. They are alike to begin with in what, from the point of view of Continental Europe, is their

extreme narrowness. The broad fields of economics and of government which are there regarded as essential elements of a lawyer's training are with us cultivated, if at all, only by the minority of students who attend college before entering the law school. The exclusion of these topics from the law school curriculum proper is explained first by the law office parentage of the modern American law school, and secondly by the greater and constantly increasing complexity of our technical law. This has made it impossible for academic influences to add these topics and yet continue to do justice to the narrower field of study during the limited number of hours available for instruction. Furthermore, the resemblance is not confined to the prevailing exclusion of non-technical subjects. It extends likewise to the classification and choice of technical subjects, where again the pressure of time is severely felt. Unless the curricula were outwardly very similar, one to another, the schools could not have obtained their present uniform standing in the bar admission systems. For the curriculum is the one outstanding feature of a law school of most obvious interest to the authorities responsible for admitting students to practice. In any single state, schools can take over the function of preparing these students for admission only to the extent that the course of preparation includes all the topics that the admitting authorities think ought to be included, and in which they test an applicant's proficiency through their own examinations. And since it is everywhere recognized that the common or judge-made law, because of its intricacy and its relative importance, must form the backbone of the student's preparation, and since, in spite of minor divergencies, the general principles of this law are everywhere the same, it follows that there is a likeness also as between state and state. National law schools, that prepare students to practice in all jurisdictions, are at once an outcome of this general similarity between the school curricula and the bar examination content in all the states, and an additional factor in perpetuating it.

In this process of curriculum building, the part played by the bar examiners in partially standardizing the course of preparation must not be confused with the small direct influence exerted by them upon the activities of the stronger schools. Our admitting authorities possess the same theoretical power as those of England and Canada to determine, through the content of their examinations, what the curriculum of the law school shall be. Owing to their actual weakness, however, as compared with English and Canadian authorities, they have not interfered

with the free development of legal education to anything like the same extent. Occasionally courts or bar examiners irritate individual schools by including in their examinations topics—notably matters of procedure and practice—that seem to such schools hardly worth while. This, however, is only a contributory influence in the building up of the law school curriculum. Its main lines are determined in the following manner: One or two leading schools develop a curriculum which, in more or less modified form, is copied by other schools throughout the country. The bar examiners recognize this as orthodox, and build their own examinations upon it. Subsequently established schools can do nothing else than conform to this model.

By this interplay of forces the school curricula are kept fairly close together. The wealthier schools add new topics or subdivide old ones, but owing to limitations of time these innovations are usually given as electives. As regards the greater part of the work actually taken by the majority of the students, the schools all ostensibly cover about the same ground. They have to, so long as they all cherish, with the sanction of the state, the ideal of preparing students to enter all branches of legal practice. This task has now become so difficult that even the strongest schools accomplish it indifferently well. Other schools are constrained to follow their lead, often at a long distance.[1]

6. *Points of Dissimilarity among American Law Schools*

Underneath this superficial similarity wide and ever widening differences exist between the schools. The fact that no corresponding distinction has been made in the position accorded to them in our system of preparation for the bar must be ascribed primarily to the fact that they were originally interlopers in the field of legal education, and had slowly to fight their way to recognition against the prejudice of men trained by earlier methods. To these older men in actual control of the details of bar examination systems, distinctions between school and school seemed at first slight compared with the distinction between office training and law school education in general. Owing to this, and to the general laxity of professional control, little enquiry was made as to details. The schools reached their present position as an undivided group. When later the differences between them became still more marked, and control of the bar examinations passed into the hands of

[1] Compare Part V (Chapters XXI–XXII).

men better qualified to appreciate how important these differences were, the tradition of a uniform system of admission into a unitary bar was too firmly established to make possible a varying treatment of recognized law schools.

To the extent that there has been any facing of the problem created by the existence of widely different institutions, all purporting to do the same thing, recent effort has taken the direction, not of according varied privileges to schools of different types, but of denying any recognition to schools not possessing certain qualifications; but this movement, more drastic in its conception, has produced only slight results in diminishing the variety of schools that continue to be recognized. Among the more important variations of which no cognizance is taken are differences in the kind of law taught—local and concrete, as against national and generalized—and in the method of instruction employed—textbook or dogmatic, as against a critical examination of cases or original sources. Even the amount of time devoted by the student to his education is generally ignored. It is true that as regards the mere length of the technical course, several states have refused to recognize law schools offering a course covering less than two or three years, as the case may be; and some states prescribe also the minimum length of the academic year and the minimum number of classroom hours offered weekly. This has done something to reduce the natural variations between the schools in this respect. As regards, however, the at least equally important feature of the amount of general education required for the law school degree, the schools have been left to themselves, and vary from no entrance requirements at all to the prerequisite of a college degree for admission. The farthest that any state has gone to meet this situation has been to require a high school education of all applicants for admission to the bar, and usually the student is not obliged to satisfy even this requirement until he comes up for his law examination. That is to say, the useful English safeguard of a preliminary examination before the technical studies begin is omitted in favor of a requirement that encourages cramming in general subjects after the applicant has already begun to study law. Finally, there is a distinction of the utmost importance between schools intended for students who during their years of residence devote all their time to their studies, and schools designed for those who can set apart for this purpose only part of their working hours. Under our present system of bar admissions both types of schools stand on an even footing.

If we are properly to understand the condition into which legal education has drifted in this country, this matter of the amount of time expended by the student in securing his education is fundamental. In its three aspects of the length of his technical course, the amount of preliminary time he must devote to general subjects, and the amount of time he is expected to devote to his studies while in the school, it is the quantitative measure of our present law school degrees. Whatever other criteria are useful in distinguishing school from school, here is one that cannot be overlooked. In particular, the kind of law that is or should be taught, and the method of instruction that is or should be employed, are largely determined by the general education of the students and by the amount of time they devote to their work while in the school. Similarly, the quality of the instruction offered and the many factors that affect this quality, such as the capacity and the remuneration of the instructors, are matters of great importance; but before they can be profitably considered, the relative effort that is expected to be put forth by the student body must first be clearly grasped. A strange spectacle is here presented. Radically differing amounts of preparation are regarded by the admitting authorities as all just about the same thing. What is to be said—not in historical justification, but in logical defense—of this situation?

As regards the first aspect of the quantitative measure of legal education—the mere length of the technical course in years, weeks and classroom hours—it may be said that the admitting authorities have shown a tendency not only to face the problem by their prescription of minimal quantities, but even to go farther in the way of minute regulation than is wise, in view of the extent to which they ignore the other two aspects. The length of the course is a feature of law school activities that lies on the surface and invites regulation from above. But it is at least open to question whether a requirement that some states have introduced of ten hours classroom work weekly has not hurt rather than benefited night law schools, by compelling them to hold sessions every night instead of leaving two or three evenings free. Its effect is not to increase the amount of time that serious students devote to their work, but merely to alter the distribution of their time between classroom work and outside preparation.

As regards the second aspect—the amount of general education demanded by the states—it may be said in further exculpation of their previous leniency in this respect that it is not reasonable to expect

a democracy to raise the amount of general education requisite for admission to its public service beyond the level that can be reached by the average man; that in proportion as our public high school system has been developed, the states are showing a tendency to require this much; and that subject to grave administrative defects, which can easily be remedied once attention has been called to them, this minimum requirement compares favorably with that in force to-day either in France or in England. In both these countries the minority who can secure a greater amount of general education do so, and receive corresponding professional benefits, though in different ways: in France by entering an upper branch of the profession; in England by entering an inner circle of both branches, determined not by law but by social and professional sanctions. In this country, underneath our lax formal requirements, we have consistently preserved the English tradition that, if he can get it, a college education is a good thing for a lawyer, from many points of view. So the college graduate has always found his way into the law schools and into the profession, whatever have been the actual requirements for entrance into either. Recently a few law schools, in order better to serve their own special purposes, have chosen to specialize in college graduates, as it were; a still larger number of schools, similarly anxious to have a foundation of general culture and maturity on which to build, yet loth to lose to their competitors students not possessing this foundation, have introduced compromise entrance requirements at some point between a full college course and the minimum of general education that the law allows; it does not necessarily follow that the states ought to raise this minimum beyond the now generally accepted high school requirement. Those who appreciate the force of the democratic contention that the bar must be kept accessible will feel that the question at issue is rather whether superior general education should be a requirement enforced as in France, not for legal practitioners in general, but for an upper professional branch still to be established. At this point, however, the question runs into the broader and more difficult problem of whether a formal differentiation of the technical bar, corresponding to the differences which actually exist among practicing lawyers, can be and should be secured. If it is neither practicable nor desirable to accord varied privileges to schools of different types, then there is much to be said in favor of continuing the English custom of relatively low formal requirements by the admitting authorities, and of leaving individual law schools free to decide for

themselves whether they prefer to restrict their own activities to the preparation of that element in the profession which is willing and able to preface its technical studies with college work, or whether they would rather prepare a larger number of less well educated students.[1]

As regards, however, the third aspect in which the amount of time devoted by the student to his legal education presents itself—namely, the amount of time he is expected to devote to his studies while attending the school—no defense, built up on English analogies, can be made for the existing situation. The distinction that has grown up between schools in which the student devotes all his working hours to securing a mastery of the law, and schools intended for students engaged in other occupations, is vital. It has been ignored in the admission requirements of the states. This has produced such lamentable effects that it will be worth while, even at the cost of subsequent repetition, to include in this preliminary survey a brief account of how the schools came to be divided into these two contrasted groups, and of why this theoretically desirable differentiation works so badly in actual practice.

7. *Origin of the Distinction between Full-time and Part-time Law Schools*

Traditionally, of course, a law student was expected to devote all his working hours, during his period of technical training, to the law. This was true whether, as under the original English system, he secured his entire training in the office of an individual practitioner, or whether, as in the system developed there during the nineteenth century, he divided his time between office and school. The English have never departed from this principle; nor, at first, did we. We applied it, however, to our earlier law schools in two ways. Predominantly, the law office ancestry of these schools resulted in their inheriting naturally the entire time of their students. Thus there grew up our characteristically American full-time type of law school, whose students are expected to devote all their working hours not only to law study in general, but also to the particular course of study provided by the school. In the small country towns, where most of our early law schools were situated, the later English combination of school and practical office work could not have been introduced, even if it had been desired; for there were not enough practical law offices available to accommodate the large number of law school students.

[1] Compare Chapter XXXII, sec. 1.

The pressure of work in these full-time schools far exceeds that maintained in the law schools or universities of other countries. It is among these schools, also, that the movement for higher entrance requirements and for the exacting case method of instruction arose. Foreign observers are full of admiration for what is accomplished by mature and broadly educated students under these conditions. Valuable as is the service provided by these schools, however, it is necessarily restricted to that element of the population that is able to devote all its time to educational activities during a long period of years. The low tuition fees demanded by state universities—the provision of scholarships and student aid by endowed universities—the opportunities for remunerative occupation that are open to students of unusual physical and mental vigor during the academic year or the long summer vacations—these are all merely palliatives. The unfortunate fact remains that many students are, and always must be, debarred from the advantage of attending these schools, not because their capacity is inferior to that of the general run of students who do attend, but because they spring from an economically less favored class in the community. The better this type of school is, the more closely does it approximate to one ideal which we surely need to preserve: that of supplying the very best legal education to those who can afford to secure it.

Not all of our earlier law schools, however, took advantage of the opportunity afforded them to claim the entire field of legal education for themselves. There was an undercurrent of feeling that law school education, in spite of its practitioner origins, is inherently theoretical. One way of preserving the practical element is to have the student attend a genuine law office while he is in the law school. In the larger cities conditions were favorable for this experiment; and so quite commonly here, whether because of office clerkship provisions lingering in the bar admission rules, or because of a traditional respect for this idea that survived the abolition of a formal requirement, the hours for classroom sessions were placed at a time of day—usually the latter part of the afternoon—that was convenient for practitioner instructors and for office students. The student was supposed to be devoting his entire time to the study of law, but was not supposed to be devoting his entire time to the work of the school. The arrangement resembled somewhat that which was meanwhile being put into effect in England, and was doubtless to a considerable extent a conscious imitation of this model.

There was this important difference, however: In England the student was certainly in a genuine law office under strict articles of clerkship. In this country, on the other hand, not only was the office connection from the beginning less carefully supervised, but also—and particularly in our larger cities—the demand by law offices for genuine student assistants gradually fell off. This change, due probably to the substitution of the stenographer for the long-hand copyist more than to any other single cause, reduced the education secured by an increasing proportion of the students to that provided by the school itself. Both the late classroom hours and the not very exacting standards of purely law school accomplishment survived this change. Eventually, the existing large-city law schools pretty generally—so notably Columbia and the University of Pennsylvania—took up the slack, and transformed themselves into full-time institutions. Meanwhile, however, these features of law school organization, originally introduced for the benefit of law office clerks, had incidentally served to open the doors of the schools to students engaged in other occupations. A class of young men, ambitious to secure a legal education, but not able to afford that provided by a full-time school, had been brought into existence. New schools were started for their especial benefit; and with improvements in methods of artificial illumination it became possible finally to hold sessions in the evening, thereby extending the opportunity to secure a legal education to a still wider element of the population. Thus arose the modern night law school, whose existence, like that of similar institutions in other educational fields, is justified by the democratic desire to extend the privileges of education to the many—a desire that is particularly potent when this privilege carries with it that of admission to our governing class. The existence of this type of school has facilitated the most notable improvement that has been recently effected in bar admission rules—a general lengthening of the prescribed period of study. It is comparatively easy to put through this reform if the study may be pursued in a night law school.

The full-time law school and the part-time law school proceed, accordingly, from different premises. The one seeks to serve the community by turning out well-educated lawyers. In pursuit of this aim, it must turn away those who cannot give to its work the requisite time. The other accepts the overflow and gives them all it can during the time at its disposal. It serves the purpose of keeping the privilege of practicing law from falling too exclusively into the hands of those

who can afford the first type of education. This differentiation of the schools into two types, each emphasizing one of the two fundamental characteristics of a bar admission system that are demanded by an efficiently governed democratic state, has much to commend it in its promise of future development. If law school graduates enjoyed different privileges in the practice of the law, corresponding to the differences in educational effort between full-time and part-time work, the two types instead of rivaling would supplement one another. Each could develop independently along the lines indicated by its own special aim. The full-time schools would, for instance, be entirely free to ignore democratic considerations in such matters as the raising of their entrance requirements, for the reason that another type of institution would already adequately satisfy this demand. Part-time education, in and of itself, is in no way undesirable. It is as idle to deny that earnest students can and do profit much from attendance at a good evening or late afternoon law school, as it is to pretend that work pursued under such conditions can be equivalent to that of a good full-time institution.[1]

8 *Evil Effects of Combining Radically Different Types of Preparation with the Theory of a Unitary Bar*

The evil—the very great evil—of the present situation, as a result of which all part-time legal education now rests under a justified cloud, lies in the perpetuation of the theory of a unitary bar, whose attainments are to be tested by uniform examinations. This formula, once adequate to the needs of sparsely settled communities, has been carried over into a period when it is no longer workable. Under the notion that there is such a thing as "a" standard lawyer, radically different educational ideals are brought into conflict with one another, to their mutual injury; this in face of the fact that they actually produce radically different types of practitioners. To begin with, the night schools are damaged by the obligation placed upon them to cover the same curriculum as the day schools. Since they can do this only in a relatively superficial way, the best teachers, and to a considerable extent also the best institutions, often hesitate to enter into what, from a scholarly point of view, is low-grade work. This throws the field open to more or less well-equipped promoters who operate proprietary schools—

[1] Compare Chapter XXXII, sec. 2.

a necessary preliminary phase in the development of our educational system, but a phase that is being rapidly outgrown among full-time schools because it exposes school standards to obvious dangers. The bad reputation enjoyed by night schools then reacts unfavorably upon the development of full-time schools as well; for under a system of free competition these latter are so fearful of losing students to institutions which — they are confident — are debauching the bar, that they hesitate to raise their own entrance requirements to the level that they really believe in.

In their relations also with the bar examiners, both types are affected adversely. The remedy of the evil that some full-time schools would like to see employed — namely, the maintenance, by these examiners, of such high standards that night school graduates could not hope to pass — is hopelessly impracticable. Even apart from the fact that night law schools, through their graduates, can bring pressure to bear upon courts and legislatures to prevent themselves from being killed, the bar examiners are in general too conscious of the fallibility of their own tests to assume the responsibility of discriminating against the large number of applicants who come up from these institutions. Even under the most favorable conditions, therefore, the standards of the examiners are lowered beneath the level that would be practically enforceable for graduates of full-time law schools. These latter institutions are to this extent deprived of the benefit of an external test keyed to their particular capacity. This loss is the more unfortunate because even within their institutions the English tradition of a comprehensive and independent university examination has almost wholly lapsed. In most cases the examinations for the degree are conducted separately for each one of the many subjects into which the curriculum is divided, and by the same individual who supplies the instruction. Even so, it would appear that the bar examinations might at least have some effect in checking up the work of the night schools. But here the additional complication must be reckoned with, that the distinction between full-time and part-time work is not merely a distinction between more and less. Many full-time schools, as already noted, aim to teach a type of law that is different from the local law of the night schools, and employ different methods that are designed to produce different qualities in their graduates. The bar examiners are thus faced with the impossible task of devising a single set of tests for two quite different types of attainments. If they favor either type at the expense of the

other—as sometimes, during spasmodic efforts to "raise standards," they are courageous enough to do—they promptly get into trouble. For the full-time schools, equally with the part-time schools, have their graduates through whom they influence the judges to whom bar examiners owe their appointment. The examiners soon learn that their wisest policy is to ask questions of a sort, and grade answers in a manner, that, if it does not assist, at least does not penalize the work of either type of school. In other words, they are obliged to limit the scope of their enquiries to those elements that any law school, offering the standardized curriculum, must provide—something that even the more poorly trained of the night school students can pass, at least with the aid of special coaching in the peculiarities of individual examiners. Not merely is there little check upon those who actually graduate from either type of school, but even students whom the schools themselves regard as inferior slip in: in some states because no definite period of study is prescribed; in other states because applicants, taking advantage of a rule that requires mere attendance (not satisfactory completion of the work) either in an office or in a school, eke out an unsuccessful school record with easily obtainable "attorney's certificates."

In a word, the conventional picture of our bar admission system that is commonly drawn is as follows: The state, through its examining board, is supposed to test all applicants for admission to its bar—in most cases after they have already been subjected to tests provided by the schools. The actual situation is that neither the tests of the state nor those of the law schools serve to prevent incompetents from flooding the profession. Taking into consideration the effect of night law school advertising in artificially stimulating a demand for legal education, there can be little question but that, in spite of all recent efforts to raise bar examination standards, more incompetents are to-day admitted to the bar than when, under laxer formal requirements for admission and a far smaller development of good law schools than we now possess, the generality of actual applicants nevertheless received a sound training in the office of an old-fashioned practitioner. This may not be the only reason for the comparatively low repute which our present generation of lawyers enjoy, but it is at least a highly important contributory cause. The good are lumped with the bad in popular condemnation.[1]

[1] Compare Chapter XXXIII.

9. *Actual Educational and Social Differentiation of a Technically Unified Profession*

The dark side of the present situation has been shown. Its bright side is that there has been at all times an element in the profession that has carried on the old traditions of the English bar. Originally composed for the most part of college graduates who studied in the best law offices, this element—although still very hazily defined—now tends to be composed of college graduates who have studied in the best law schools. While in its lower ranges the bar, for the reasons just described, has been getting worse and worse, on top, at least from the point of view of intellectual mastery of the law (for of course there are crooks both above and below), the development of law schools has made it better and better. Thus, beneath the formula of a technically unified bar within each state, the profession has actually become widely differentiated.

Soon after the Civil War, steps were taken to organize the upper element into selective bar associations designed to "maintain the honor and dignity of the profession of the law." The technical division of the bar along state lines has greatly handicapped this movement and retarded the upbuilding of a federated national organization capable of exerting its influence effectively upon the profession as a whole. Credit for such advance as has been made in improving standards of bar admission must, nevertheless, fairly be given to these associations—or more specifically, to the small but devoted minority of their members who, amid many discouragements, have applied to this end their new and still inadequate professional machinery. The precise place which these associations will ultimately occupy in the organization, technical and actual, of the American bar has yet to be determined. In some ways they resemble the old English "Society of Gentleman Practitioners." The immediate analogy in accordance with which they were originally formed was supplied by American medical societies. To some, accordingly, it has seemed that, when their internal organization has been perfected, they might aspire to the same control of the entire legal profession that is now exercised by the Law Society over English solicitors or by the American Medical Association over our own physicians and surgeons. In view of the different conditions that prevail both in the English legal profession and in the American medical profession, as compared with the American bar, it is at least doubtful whether this ideal can, or should, be realized. On the other hand, a great opportunity is open to these associations to make more explicit the identity

that already to a considerable extent exists between their own membership and that element in the legal profession that has graduated from colleges and from full-time law schools. A combination of the three forces that make for the highest type of lawyer—a liberal education, an intensive course of technical training superimposed upon this, and the maintenance of bar association standards of professional ethics—would be practicable to-day if it were confined to the younger men, and did not exclude from bar association membership those whose professional record alone would give them a valid claim for admission. This union of the best scholastic and the best professional elements would be an important first step toward introducing some sort of order into the present chaos of the legal profession. There would then stand out among the mass of technically identical, but actually most dissimilar, practitioners, such as different methods of preparation are certain to produce, a well-defined, powerful and respected inner bar. It could be left to the future to determine what further steps might prove necessary to prevent less soundly trained practitioners from abusing the privileges that democratic philosophy demands shall be theirs—whether these privileges must be restricted by law, to correspond to the type of training such lawyers receive, or whether popular and professional reputation, accompanied perhaps by a corresponding development of their own professional associations, will provide a sufficient sanction to accomplish this purpose.

At this point, however, we enter the realm of contemporary discussion. What is here emphasized is that, with all their imperfections of organization, and uncertainty as to where their true mission lies, our modern bar associations are clearly destined to play a very important part in the much needed improvement of the American legal profession.[1]

10. *General Characteristics of American Law and Methods of Recruiting a Legal Profession*

To sum up this introductory survey of our general development:

We have carried on the English tradition that law is nothing more nor less than a body of rules enforced by the courts, as contrasted with the Continental conception of an external body of law that exists under this name, independently of the form that the courts give it when ap-

[1] Compare Part IV (Chapters XIX–XX).

plying it to concrete cases. In determining the content of this law, our existing judges are under a self-imposed obligation to respect decisions made by their predecessors in similar cases; and they are under an obligation imposed upon them by the state to respect competent legislation; but they are not under any obligation, as are the judges of Continental Europe, to respect a systematized body of theoretical principles, largely the product of the universities, and now sanctioned by the state as authoritative law. It is only from considerations of convenience that they actually do lean to an increasing extent upon a similar, though less completely systematized, body of textbook or notebook doctrine that our universities and independent legal scholars have as a matter of fact brought into existence. In taking over from England this conception of law, our early judges naturally took over at the same time the content also of the earlier English judge-made law; and the respect that later judges have paid to precedents thus established, combined with the general failure of our legislatures to enact comprehensive codes, has perpetuated the general principles of this earlier law till the present. Inevitably, however, with the lapse of time, the bodies of law enforced in our several states have diverged from that of England; and because under our federal system of government there is no general right of appeal from the highest courts of the states to the Supreme Court of the United States, these bodies of state law have also diverged to some extent from one another. This latter divergence has been checked by the respect paid by our judges to precedents established in other states than their own. Thus a relatively uniform body of American law has been created. The device used to accomplish this result has, however, greatly increased the number of precedents that may have to be consulted in order to determine the law of any single state. A burden much greater than in England is thus thrown upon judges, upon practitioners, and upon students of law. Both the practice and the teaching of the law, approached in this manner, are so difficult and, owing to unavoidable judicial error, yield such unsatisfactory results, that a group of universities is now engaged in teaching primarily not what the law actually is in any particular jurisdiction, but what it ought to be in the country as a whole. Lack of sympathy with this ideal by the courts sometimes leads to still further confusion.

Our law of bar admissions is like our law in general, in being based on English traditions, but in showing now a considerable divergence from the English system of the eighteenth century, and a still greater diver-

gence from that in force to-day in England or Canada. From England we inherited the institution of lawyers as an official class specially privileged to practice law professionally in the courts, and therefore always under state control. From England also we inherited the tradition that the state organs which might most appropriately grant admission into this privileged class of practitioners are the courts themselves, since it is fundamentally their law that is practiced. From England finally we inherited the tradition that the student's course of technical training in this law is properly to be pursued under an actual practitioner, and that if a law school education may be accepted in lieu of this, the substitution is justified by the fact that the school is conducted by practitioners, and not at all by the fact that it may form part of a university. On the other hand, our political philosophy intervened to prevent the control of the profession from passing out of the hands of the judges into those of the bar itself, to wipe out all distinctions of privilege within the bar, and greatly to facilitate the process of admission. This last step, and particularly the failure to limit the number of students who might enter a law office as clerks, made possible in this country a much freer and more natural development of law schools, many of which became attached to colleges as parts of a new American type of university.

These schools, all of which occupy an identical position in the eyes of the law, resemble one another in the range of topics included in their inherently theoretical and prevailingly narrow course of study. The adaptation by the bar admission authorities of their own examinations to this orthodox curriculum has the effect of drawing students out of the law offices into the schools; and even independently of this influence, the private law office, because of its own changed character and of the increasing complexity of the law, is no longer competent to provide satisfactory training. The law schools as a whole thus virtually monopolize the field of legal education. Underneath their superficial similarity, however, these schools differ vastly from one another in type of law studied, in methods of instruction, and in the amount of actual work represented by their degree. The most important distinction is that between schools intended for students of considerable general education who devote all their working hours to their studies, and schools intended for students of inferior general education who study law during such time as they can spare from outside remunerative occupations. Both these types of law school supply genuine social and political needs.

Coming, however, into direct competition with one another under the accepted dogma of a unitary bar, each affects injuriously the other's development. In addition, the bar examination system, confronted with the task of providing uniform tests for radically different types of preparation, has collapsed under the strain. Students who could not secure the degree even of a poor law school are admitted to the bar with the same privileges as are acquired by honor graduates of the best schools.

Finally, it is emphasized that a bar that includes elements so diverse is a unitary profession only in theory. In actual practice its members cannot work together in a professional spirit. Differences in training and in social standing are recognized, and we have actually a differentiated profession. Membership in selective bar associations produces an organic line of division, that is already to a considerable extent determined by considerations of this sort. The explicit recognition of educational standards as the basis of admission into these associations would constitute an important step toward the rational organization of the profession.

PART II

THE ORGANIZATION AND RECRUITING OF THE LEGAL PROFESSION IN THE UNITED STATES IRRESPECTIVE OF THE INFLUENCE EXERTED BY LAW SCHOOLS

CHAPTER IV

AUTHORITIES ADMITTING INTO THE PRACTICE OF THE LAW

1. *Location of the Admitting Power at the Close of the Colonial Period*

THE systems of admission to the bar in force immediately prior to the Revolution[1] may be roughly classified, with reference to the admitting authority, under three heads.

In Massachusetts, New Hampshire, Pennsylvania and Maryland the traditional English system, whereby each court was empowered to admit attorneys to its own bar, still prevailed. This was presumably also the case in the frontier colony of Georgia. The tendency was for the highest court to guard its bar more jealously than the courts below and thus to establish the principle of a graded profession. In Massachusetts a third grade of gowned barrister had been added to those of lower court and upper court attorneys.

In Rhode Island each court was empowered to admit attorneys, but the principle of judicial comity, naturally emphasized in a small community, had early crystallized into a definite right on the part of an attorney admitted by one court to practice in any other. Under such circumstances the local court is more likely to be chosen by an applicant than the higher court. In Connecticut this had developed logically into the rule that admission to general practice was conferred by any County Court, and by these courts only. The Delaware system seems to have been similar except in one respect. From this period doubtless dates the technical distinction still maintained in this state between general practitioners at common law and in equity, corresponding to the original English distinction between attorneys and solicitors.

In the five other colonies the principle of centralized control over admission to practice was established. This control was exercised in three ways. In Virginia the General (highest) Court admitted attorneys to its own bar. In theory the lower courts also admitted to their respective bars, to the extent that the oath of admission must be taken in each one. Before this oath could be taken, however, a license must have been secured from an examining board appointed by the General Court. In South Carolina full control over admission to all courts was

[1] For the origin of the legal profession in the American colonies, see Warren, Charles, *History of the American Bar*, 1913.

vested in the Supreme Court. In North Carolina, New York and New Jersey all attorneys were technically appointed by the royal Governor, though in practice such appointments were usually made on the recommendation of a judge or court. Here also at least two grades of practitioners were distinguished; in New Jersey there were three—attorneys, counsellors and serjeants.

In all the colonies, but especially in South Carolina and Virginia, English-trained barristers seem to have been recognized as the best educated type of practitioner, and to have been accorded, either in theory or in practice, privileges not possessed by the ordinary applicant, or by the ordinary admitted attorney. Thus in Virginia, for instance, while attorneys might not practice in both upper and lower courts, barristers were subject to no such restriction. These special privileges, accorded before the Revolution to actual graduates of the Inns of Court, are to be distinguished from the indirect influence of this practitioner's degree in suggesting the home-trained "barristers," "counsellors" and "serjeants" noted above as constituting upper grades of the profession in several colonies.

2. *Development of the Decentralized Systems of Admission prior to 1890*

For some sixty years following the Revolution, the primitive system of allowing each court to admit to its own bar showed some strength. Its adoption by New York in 1777, and by the federal courts in 1789, together with its survival in Massachusetts, New Hampshire, Pennsylvania and Maryland, made this the dominant system in the northeastern, conservative section of the country, prior to the advent of the Jacksonian democracy. Between 1832 and 1838, however, Maryland, Massachusetts and New Hampshire abandoned it in the order named. New York followed their example in 1847. Thereafter, although occasionally introduced into the territories for a time,[1] it was virtually restricted, as the permanent basis upon which the courts themselves may build, to Pennsylvania and to the federal courts, including those specially instituted for the District of Columbia.

A device that proved more popular was one which, as we have seen, had developed in Delaware and two New England colonies before the Revolution—the system that an attorney, having been admitted by any one of several courts, became thereby entitled to practice generally in all. In its origin, this system found its justification in the ac-

[1] So notably into Wisconsin, New Mexico and Utah.

quaintance which judges and practitioners, in comparatively small and thickly settled areas, had with one another. Under such conditions the maintenance of uniform standards was reasonably well assured, and it was a matter of courtesy among the judges, and of convenience to all concerned, to recognize admissions in one court as good for all. Later, as the movement for lowering educational standards gained strength, the idea came to have a value simply for this purpose. In its extreme form it degenerated into the system now in force in certain states, whereby an applicant, out of many avenues of entrance to the bar, freely chooses the easiest. Many varieties of this general system can be distinguished, as, for instance, those in which the applicant may come up only in the county or district of his residence (a requirement that can usually be evaded with little difficulty), or those under which not all courts, but only certain courts, possess the admitting power. In some jurisdictions this power was vested, not in a lower court as such, but in any two circuit judges. This was a degraded form of the Virginia system of 1792, under which any three (later two) "judges of the Superior Courts" might admit to practice. Such judges, at the time, held circuit courts individually, and constituted collectively the higher court of appeals. Later, in the development of our judicial system, it became necessary to establish special circuit judges distinct from those of the highest court; although possessing only local jurisdiction, they continued to be "superior" to the older County Courts, and hence in several states, including Virginia, they succeeded to the admitting power. In practice a single one of these local judges would examine the applicant; a second judge would then sign the certificate as a matter of courtesy. The Virginia system had great influence in the South and West. Several states, having started along this line, ended up in the older "any court to all" system. These minor distinctions, to whatever historical cause attributed, are of little importance in practice. The essential feature of this general method of securing admission to the bar is that, except in the very smallest states, no uniformity of standards can be maintained, and that the court or judge who maintains the lowest standards is likely to be the one most frequented. As late as 1890, fifteen states or territories admitted applicants to general practice under one form or another of this multiple avenue system.[1]

[1] Delaware (by 1736), Kentucky (1796), Virginia (1809), Tennessee (1809), Michigan (1837–46; 1848), Missouri (1830), Maryland (1832), Massachusetts (1836), Mississippi (1840), New York (1847), Indiana (1851), Washington (1853), Minnesota (1856), West Virginia, (1863), Texas (1873).

Distinguishable alike from the "each court to each," or separate court bar system, which encouraged the development of several distinct grades in the profession, and from the "any court to all," or multiple avenue system, which tended to prevent the maintenance of any standards by or for any court, sixteen jurisdictions, in 1890, attempted to safeguard the bar of the highest court, but of the highest court only. This was done in one of three ways. Vermont, in 1787, had substituted for its original court bar system the device of letting any lower court admit to all lower courts, but permitting the Supreme Court to regulate admission to its own bar. This plan survived, in 1890, in nine[1] jurisdictions, although in few of these was the distinction between the ordinary and the Supreme Court practitioner more than a formality. Indiana, in 1817, had approached the matter from a different point of view. Here, as in several other territories, under Virginia influence, two judges of the General Court had exercised the admitting power; and here, as in many states, this single type of judge had now been differentiated into distinct Supreme Court and Circuit Court judges. Virginia and several other states, as we have seen, had allowed the circuit judges to retain the power of admitting to all courts. Ohio, Louisiana, Illinois and North Carolina were instances of states that had restricted this power to the Supreme Court judges and had thus preserved the principle of centralization. Indiana made a distinction: any two circuit judges might admit to practice in all lower courts; any two Supreme Court judges might admit to practice in all courts. In modernized form (any one of several lower courts admits to all lower courts, the Supreme Court to general practice) this system was in force, in 1890, in four jurisdictions.[2] Finally, California, because of its isolation and its size, had developed still another minor variation. Local courts admitted merely to their respective bars: the Supreme Court to general practice. This system existed, in 1890, in three of these sixteen jurisdictions.[3]

3. *Decadence and Revival of the Principle of a Central Admitting Authority*

In the years immediately after the Revolution the principle of centralized control over bar admissions, which had been fostered by the

[1] Florida (1846), Nebraska (1857), Kansas (1859), Georgia (1861), Wisconsin (1861), North Dakota (1877), South Dakota (1877), New Mexico, Oklahoma (1890).

[2] Alabama (1821), Arkansas (1836), Arizona (1865), Wyoming (1882).

[3] California (1851–72; 1874), Utah (1884), Idaho (1887).

home government during the colonial period, received a serious setback. New Jersey preserved her system, as she has to the present day, and Virginia, North Carolina and Tennessee retained for the moment a modified and weakened form of central license. The principle was introduced into the Northwest Territory in 1799, and was retained by Ohio when this portion of the territory was erected into a state in 1802. In the other twelve states existing at this date, however, and also in the remainder of the Northwest Territory (reorganized under the name of Indiana Territory) and in the District of Columbia, admission, at least to the lower courts, could be secured by one or other of the methods just described, as the result of action by a lower court, or by one, or more usually two, local or itinerant judges. This tendency toward decentralization did not spring from a deliberate desire to let down educational standards of admission. A centralized system of admission may be a very weak one, and on the other hand in Massachusetts and New York the principle of decentralization was for many years combined with very vigorous efforts to preserve an educated and graded profession. Decentralization sprang rather from the necessity of making the machinery of admissions physically accessible to applicants, especially in large or sparsely settled states; it was a single phase of a problem that confronted our states in the organization of their entire judicial machinery. As means of communication improved, a more or less effective concentration of the admitting power in a single higher court reappeared, especially in the smaller states—sometimes with the object of introducing standards when none had before existed, but quite as often for the purpose of leveling individual high-standard courts down to a more moderate level of uniformity. For many years, however, it was only in a minority of the states and organized territories that the admissions were technically centralized; in 1840 in eight jurisdictions[1] out of thirty; in 1860 in ten[2] out of thirty-nine; in 1890 in sixteen[3] out of forty-nine.

These were the jurisdictions in which a single court—or in New Jersey, the Governor, acting on the recommendation of the Supreme Court—possessed an exclusive right to admit applicants to practice

[1] New Jersey (1704), Ohio (1799), Louisiana (1808), Illinois (1809), North Carolina (1818), Vermont (1826), New Hampshire (1838), Maine (1838).

[2] Add Rhode Island (1844), Connecticut (1855).

[3] Add Oregon (1861), Colorado (1861), Montana (1865), Nevada (1871), South Carolina (1878), Iowa (1884).

in all courts.[1] The actual result of the conflict between the principles of centralization and decentralization is not accurately expressed, however, by a classification of the admission systems on this single basis. In one-half of these jurisdictions, although in 1890 a single court was technically in control, it was either obliged to administer its rules through committees appointed by it for the localities[2] or it had voluntarily delegated its powers to local bar associations, courts or committees.[3] Furthermore, in four of the systems classified as decentralized, the evils of divided responsibility were more or less completely obviated. This was the case in both of the "court bar" jurisdictions. In Pennsylvania, namely, the Supreme Court had retained colonial rules with reference to its own bar, which not only made this bar an upper grade of the legal profession, but also served very largely to standardize the rules of the courts below. In the District of Columbia the power to admit applicants (not already admitted as attorneys elsewhere) was as a matter of common convenience exercised only by the Supreme Court of the District. So among the multiple avenue states, New York, in 1871, not only reduced the number of admitting courts, but also made their activities subject to rules prescribed by the Court of Appeals.[4] Finally, the Wisconsin legislature, in 1885, though it retained the old system of technical admission by any circuit judge to all lower courts but admission by the Supreme Court to its own bar, added the requirement that all applicants must be examined by a central board.

Immediately prior, then, to the modern movement to raise bar examination standards, the states and territories were just about evenly divided between three methods of locating the admitting power. Designating these by the names of their oldest surviving representatives, there was, first, the Delaware system, under which admission to general practice might be secured through more than one local court. This sacrificed every other consideration to the need of making the admitting machinery convenient of access to applicants. Except in the smallest

[1] The Governor also exercised the admitting power in Virginia until 1786, in the Northwest Territory, 1799–1800, and in Mississippi Territory, 1807–18. In 1780 Governor Thomas Jefferson signed Captain John Marshall's license to practice law in Virginia.

[2] In Maine, Colorado, Montana, Nevada.

[3] In Connecticut, Vermont, Illinois, Louisiana.

[4] For convenience of exposition, the local divisions of the New York Supreme Court, reduced this year from eight to four, are regarded as separate courts. In a very technical and unreal sense, the bar admission system of this state may be described as "centralized" since 1847. Similarly in Delaware.

states, where the standards of the highest court were likely to be followed by the lower courts, this was inherently vicious. In the second place, there was the Alabama system, under which a distinction was attempted between the lower court bar and the more carefully guarded bar of the Supreme Court. This represented a more intelligent attempt to combine geographical convenience with maintenance of standards. Third, and last, were those states in which, as in New Jersey from the beginning, admission was more or less effectively centralized. This was frequently combined with a decentralized administration of the admission rules; and *per contra*, the element of centralized control had been injected into some of the technically decentralized systems, including the two surviving representatives of the primitive court bar idea.

Since 1890 the movement has been altogether in the direction of centralization. It has sometimes taken the form of transferring the technical admitting power to a single court and sometimes that of inserting an element of centralized control into a technically decentralized system. The manner and efficacy of the central control vary greatly, but on the eve of the War with Germany there were only two states that had failed to make some progress in this direction. These were Indiana and Kentucky, both of which retained the multiple avenue system of admission. In the remaining more or less completely centralized systems the tradition of special safeguards for the Supreme Court bar survived only in Pennsylvania and Georgia, and even here was of little practical importance.

CHAPTER V

CONTROL OF JUDICIAL ADMITTING AUTHORITIES BY LOCAL BARS AND STATE LEGISLATURES

THE power of admission to the legal profession having been located by legislative action[1] in the manner described in the preceding chapter, the following question then arose: What authority was to determine the manner in which the courts should exercise this power, especially in the important features of the period of study (if any) which should be prescribed for applicants, and the means employed (if any) to test their individual proficiency?

1. *Early New England County Bar Systems*

In the absence of further legislative action, any court that possessed the admitting power was in complete control of details. It was free to regulate its process of admission in any way that it chose. This made it possible for New England courts to dispense with any formal regulations of their own. Instead, they acquiesced in customs or rules established by those already admitted into the profession. Since under the statutes local courts possessed independent power to admit to their own bars, this meant that the county bars assumed control. As early as 1758 the bar of Suffolk County (Boston) was in control of the local situation, and shortly thereafter it established formal rules. This seems to be the origin of the county-bar system of admissions, which, by the end of the eighteenth century, was firmly established in Massachusetts, New Hampshire, Rhode Island and Connecticut. Clearly owing much to the traditional independence possessed by the upper branch of the English profession — the bar proper, as distinguished from the discredited attorneys and solicitors — it was doubtless also an influence in the subsequent establishment, by legislation, of a similar system in the Canadian Provinces. There, partly because of a greater degree of centraliza-

[1] During the colonial period the Governor sometimes established the system, by virtue of the ordinance power possessed by him under English legislation; or sometimes he appointed attorneys himself, under broad powers derived from the same source. The existing power of the Governor of New Jersey to appoint attorneys and counsellors on the recommendation of the Supreme Court grew up on the latter basis. The court's control over admissions has been held to be confirmed by the State Constitution, irrespective of the principle of the separation of powers. *In re Branch*, 70 N. J. L. (1904) 538.

tion at the start, the provincial bars, as we have seen, have maintained their independence.[1] With us the inconveniences of varying standards within the state were to some extent obviated by more or less formal agreements between the county bars. The New Hampshire county bars combined into a regular federation in 1788, and through this masterstroke of organizing ability were able to retain their privileges for fifty years. Similar efforts in other states were less successful.[2]

Originally, complete responsibility for the recruiting of the profession was placed upon these New England bars. Their recommendation of an applicant was all that was demanded by the courts, and they determined for themselves the grounds upon which they would recommend. This absolute control was first weakened when the courts intervened to determine the period of training required. This action appears to have been mainly an effort to standardize locally varying rules or customs. It was followed, after an interval, by the abolition of the entire system, either by the legislature or by a court, where the motive was more clearly to overthrow the theory of a self-perpetuating privileged class. The evils of a weakened *esprit de corps* were preferred to those of a professional monopoly. Both these steps were taken before the Civil War by Massachusetts,[3] New Hampshire[4] and Rhode Island,[5] in the order named. In Connecticut the practice varied in the different counties;

[1] See above, pages 24–25.

[2] As early as 1795 the Connecticut county bars entered into an agreement to establish uniform periods of preparation, but did not live up to it. An attempt by the Massachusetts bars to adopt uniform rules led to action by the Supreme Court in 1806.

[3] System abolished by the Supreme Court in 1806, but restored in 1810, except that the period of study was prescribed, and with the proviso that in case of unreasonable refusal by a county bar to recommend, appeal would lie to an individual justice. It is not clear by what authority the court undertook to make rules governing admission to other courts. The rules do not appear to have been enforced. The system was finally abolished by the legislature in 1836.

[4] Period of study prescribed by the Superior Court in 1833. Here again the court's authority to control admission to other than its own bar is not clear. System abolished by the legislature in 1838.

Beginning in 1859, the court attempted to revive its old rules for admission to an informally constituted upper branch of the profession, and in 1872 legislative authority was secured to make these the rules for regular admission. It proving impossible to enforce them, however, the recommendation of the bar was converted, in 1876, into an obligation upon the applicant to secure the consent and approbation of the bar before beginning his period of law study. This relic of the original system survived until 1901.

[5] In 1837 period of study prescribed by the Supreme Court for admission to its own bar (separately constituted in 1822). Power of admission centralized in the Supreme Court by the legislature in 1844. System of bar recommendation abolished by the Supreme Court in 1857.

although in 1855 the Superior Court was made the single avenue of admission, this body was essentially an integration of county courts, and adopted no general rules of bar admission until 1890. Under a provision of these rules, still in force, the recommendation of the county bar continues to be required as a check upon the applicant's moral character.

The main reason why this county bar system did not spread outside of New England was because elsewhere, during the colonial period, the ideal of professional independence was represented by graduates of the Inns of Court. Probably everywhere, in practice if not in theory, the holder of the English degree of barrister was accorded special privileges in the colonial courts. It was principally in South Carolina and Virginia, however, and to a lesser extent in other southern and middle colonies, that enough young men were sent across the water for the purpose of securing this degree to make of them on their return an influential element in the legal profession.[1] Being members of what, in modern terminology, would be termed an imperial bar, they would have had little sympathy with efforts of home-trained practitioners, such as were put forth in New England, to establish self-perpetuating local bars, rivaling their own. The seeds of self-determination not having been sown in this area during colonial times, the period after the Revolution was not favorable for its development.[2]

[1] American students admitted to the Middle Temple between 1750 and 1776 were registered by colonies as follows: South Carolina, 35; Virginia, 21; Maryland, 14; Pennsylvania, 14; New York, 2; New Jersey, 2; Georgia, 2; North Carolina, 1; Delaware, 1; total 92. No New England student was registered after 1733. Bedwell, C. E. A., "American Middle Templars," 25 *American Historical Review* (1920), 680–689.

[2] In New York City, at the close of the colonial period, the members of the bar were very active in preserving their monopoly, but if a regular recommending system was in force, it probably did not survive the Revolution. By 1797 the Supreme Court had adopted a comprehensive rule regulating the entire matter, so far at least as concerned admission to its own bar.

The Vermont Supreme Court, under the influence of its neighbors, required, in 1817, for admission to its own bar, recommendation by the county bar, in addition to an examination by a committee of such bar appointed by it. In 1826, for admission to the lower courts, it required both recommendation by the county bar and examination by the County Court. This lasted until 1843, when the functions both of "recommendation" and of "examination" were transferred to committees appointed by the County Courts.

The certificate of a single attorney, required in the Northwest Territory in 1799, and since then in many northern and western states, appears to be a relic of the original New England requirement of recommendation by the entire local bar.

2. *Increasing Legislative Control over the Process of Admission*

It has been shown how usurpation of the judges' powers by the already admitted members of the bar, in accordance with English precedents, was permitted in New England for a time, and how this method of control was finally abolished. It remains to enquire to what extent the state was willing to trust the judges themselves to develop a satisfactory bar admission system, without direct legislative interference.

Space does not permit an exhaustive discussion of the relative extent to which the details of the bar admission systems of the various states are found in rules formulated by the courts in their own discretion, or in legislative statutes that the courts are bound to respect. In general, however, legislative activity was originally most pronounced in the southern and western states, and has tended to increase everywhere, so that in most jurisdictions the more important provisions are now embodied in the statutes. This was because legislative process provided the means by which the people could most easily secure their will. During the early democratization of the bar, no question was raised as to the constitutionality of such legislation.[1] Since the Civil War, however, public opinion has been more divided as to the steps that need to be taken in order to improve our systems of admission to the bar. The element that favors more stringent rules has often had more influence with the courts than with the legislators, and laments the fact that progress is impeded by one of two causes: Where recourse must be had to the legislature to change existing statutes, the legislature refuses to act. Where the judges already have authority to introduce the proposed reforms, they hesitate to exercise it for fear of stimulating fresh legislation.

To meet this situation, the idea has been broached that, under the principle of the separation of powers, legislatures have no constitutional power to interfere with the courts in the exercise of the judicial function of admitting applicants to the bar. In a few cases the courts have invoked this doctrine to defeat particular instances of legislative aggression. In all of the cases, however, except the one first cited

[1] The only decisions involving the admission of attorneys that have been found prior to 1860 discussed merely the question whether attorneys are civil or public officers, within the meaning of constitutional provisions regarding oath of office, or requiring such officers to be electors. The answer was uniformly in the negative. *Benjamin Watkins Leigh's Case*, 1 Munford (Va. 1810), 468; *In the matter of oaths*, 20 Johnson (N. Y. 1823), 491; *Matter of Dorsey*, 7 Porter (Ala. 1838), 293; *Ex parte Porter* (3 Ohio, Dec. 1858), 333.

below,[1] the decision can be upheld on other grounds, and there are a larger number of decisions that expressly recognize the power of the legislature to control bar admissions.[2] Even as a matter of technical law, the weight of authority seems to favor the existence of this power, which, historically, has been constantly exercised. Looking at the matter more broadly, and taking into consideration the ease with which constitutional amendments can be secured, it is clear that lasting improvement must be based on a coöperation of courts with legislatures.

[1] *In re Mosness*, 39 Wisc. (1876) 509; *Matter of Goodell*, 39 Wisc. (1875) 232; but compare *Application of Miss Goodell*, 48 Wisc. (1879) 693; *Ex parte Splane*, 123 Pa. St. (1889) 527; but compare *Hoopes* v. *Bradshaw*, 231 Pa. St. (1911) 485; *In re Day*, 181 Ill. (1899) 73.

[2] *Matter of Cooper*, 22 N. Y. (1860) 67; *Ex parte Yale*, 24 Cal. (1864) 241; *In re Bradwell*, 55 Ill. (1869) 535; *Robinson's Case*, 131 Mass. (1881) 376; *Matter of O'Neill*, 90 N. Y. (1882) 584; *In re Applicants for License*, 143 N. C. (1906) 1.

CHAPTER VI

EARLY BAR ADMISSION SYSTEMS. A GRADED PROFESSION BASED UPON LONG PERIODS OF PREPARATION

WHETHER responsibility for ensuring proper educational attainments among those admitted to the bar is assumed by legislatures, by courts, or by the bar itself, the same choice of means is open. Reliance must be placed either upon the prescription of a definite period of training under competent instruction, or upon a final examination, or upon a combination of the two. The order in which these means were preferred was a natural result of the traditional method of training lawyers as attorneys' clerks. For more than a hundred years after the Revolution, no adequate examining machinery existed in any state. During this time, owing to differences in emphasis produced by our political philosophy, the development of our bar admission systems as a whole passed through three successive stages: First, there was an earlier phase, marked by the existence in several states of long periods of training, especially in connection with a graded profession. Next, and lasting till the Civil War, came the reduction or abolition of these time requirements in the states where they existed, coupled in some cases with the doing away of even the rudimentary final examination. Following the war came a tendency, which has continued to the present time, to restore or to lengthen the prescribed period of training. Not until this movement was well under way was it accompanied by an effort to improve the examining machinery also.

Postponing for subsequent discussion the development of examining machinery, the present chapter deals primarily with early prescriptions of long periods of training, and will be followed by one tracing the decadence and subsequent partial rehabilitation of this device. Early attempts to ensure long periods of preparation often took the form, however, of establishing successive professional grades, and when the period was reduced or abolished, the graded profession also collapsed. It will be convenient, accordingly, to consider the early vogue of this method of organizing the profession, and the few unsuccessful attempts that were later made to revive it, in connection with the more general topic discussed in these two chapters.

1. *A Graded Profession*

The institution of a divided or graded profession must not be confused with a mere technical classification of practitioners, according to the different privileges they enjoyed. Following the English tradition, the early admission rules of many jurisdictions distinguished between barristers or counsellors and attorneys, and between solicitors or equity practitioners and those practicing in the courts of common law. If, however, an applicant who had been admitted to practice as attorney in the common-law courts could immediately, merely by complying with additional formalities, secure the counsellor's right of audience and the solicitor's right to engage in equity practice as well, the technical distinctions were of no importance and soon even the formalities would disappear. This was the situation in Virginia, for instance, where attorney and counsel were separately mentioned in the early statutes; but as early as 1810 the court remarked: "The character of attorney and counsel are inseparably blended in the same person."[1] So also, the location of the admitting power in the courts separately, or the special safeguarding of the bar of the highest court, did not of itself operate to prevent an immediate cumulation of privileges in a single applicant. Something more than this was needed to divide or to grade the profession.

The distinction between a divided and a graded profession must also be borne in mind. In England a definite line of division has always been drawn between the bar proper, on the one hand, and the lower practitioners, on the other. The same individual cannot enjoy both sets of privileges. Similarly, in New York, counsellors could not practice as attorneys until 1804. Likewise in the eighteenth century attorneys of King's Bench and of Common Pleas were not permitted to practice in one another's courts. Colonial Virginia divided its lower court and upper court practitioners in the same way until 1787. Doubtless other early instances could be found of a divided profession, such as nearly all European countries possess to-day. Efforts in this direction were, however, quickly abandoned.

The reason why this division was originally impracticable is clearly that there was not, in the beginning, enough law business to support specialized groups of practitioners. The general practice of the law was not a field so broad that the older practitioners wished to lose the

[1] *Benjamin Watkins Leigh's Case*, 1 Munford, 468.

privilege of cultivating it in its full extent. For the same reason they were not anxious to have too many competitors in it. One method of combining a more or less conscious monopolistic tendency with an effort to ensure adequate educational attainments in the profession was to prescribe long periods of training before admission to general practice. A still better method was to prescribe long periods of training before admission to the lower courts, and additional periods of practice there before additional privileges could be secured. Considerations such as these led to the establishment of a graded profession, as a perfectly natural outgrowth and strengthening of the traditional English idea of apprenticeship training for the law. The same causes that militated against a permanent division of the profession fostered the introduction of successive grades, of which only the highest enjoyed the privilege of general practice.

Since the requirement of intervening periods of practice is essential to the existence of a graded profession, description of the different grades recognized by the states may be most conveniently given in the next section, where all early prescriptions of long periods of preparation are assembled.[1] It remains then merely to enquire why it was only in the northern colonies and states that this idea was elaborated. The explanation is to be found in the southern custom, already alluded to, of sending young men across seas to be educated in the Inns of Court These practitioners, enjoying the prestige of an English legal education, had constituted a natural upper bar. Such subordinate distinctions as had been made were of little importance compared with this, and provided no basis for future development. In the northern colonies, on the other hand, distinctions among native-trained practitioners had greater vitality. While, therefore, in the South, the Revolution, by closing the Inns of Court to Americans, virtually destroyed the upper bar, in the North it produced no such effect. The indigenous institution of a graded profession, which had already arisen in Massachusetts,

[1] It may be noted in addition that North Carolina is said to have required, between 1819 and 1869, one year's law study for a County Court license, and an additional year for a general license.

Colonial New York differentiated its attorneys as follows: Those appointed by the Governor, on the recommendation of the Chief Justice, were authorized to practice in all courts; those appointed without such recommendation, only in one or more local courts. The distinction between attorneys, solicitors in chancery and counsellors was also recognized. For admission to general practice as attorney, three years apprenticeship was usually required of college graduates, seven years of others. Nothing is known as to the requirements for the other branches of practice.

developed and spread throughout New England, in the congenial atmosphere of the county bar system of admissions, and was extended from here to New York, and temporarily to the Northwest Territory. Pennsylvania and New Jersey occupied an intermediate position in that they retained, but did not accentuate, their already graded systems.

2. *Long Periods of Preparation*

Association with a practitioner is the natural method of acquiring the rudiments of any art, and in the less well defined or simpler occupations the relationship does not need to be hedged about by any rules. It continues merely until its object has been attained. It is only as the complexity of the task increases, and as a guild spirit arises among those who are already masters of the art, that we pass into the apprenticeship stage of educational development, in which the relationship must continue during a definite period. A still later stage is that in which specialists arise to teach and train, whether as individuals conducting classes or as instructors in organized schools, colleges or universities.

During the eighteenth century the education of English attorneys and solicitors was in the pure apprenticeship stage. Since 1729 Parliament had required a uniform period of five years service as articled clerk to a practitioner prior to admission by any court. In our American imitations of this system, the requirement of formal articles of apprenticeship, when introduced at all, was quickly dropped. In some cases also there was no uniform period within the colony or state, owing to the failure of the legislature either itself to fix the length or to empower a single court to do so. In the smaller states, however, practical uniformity was usually secured by more or less formal agreements between the judges or between the county bars. In the large state of Pennsylvania the Supreme Court, from 1767 till 1903, although technically in control only of admissions to its own bar, exercised its powers in such a way as to standardize the periods of training required by the lower courts as well. It admitted only applicants who had served a "regular apprenticeship" (converted in 1788 into a "clerkship") for a certain number of years prior to practicing in a lower court during an additional period.

In many states, also, the length of the period was reduced below the English standard. Virginia, however, is the only one of the thirteen original states that prescribed no period of training at any date until

quite modern times.[1] And in several northern jurisdictions, thanks to the invention of a graded profession, very stringent requirements were imposed. Thus, on the eve of the democratic upheaval, Massachusetts required, before final complete privileges were secured, a course of training and practice that aggregated eleven years if it included a college education, or nine years if it did not; New York required ten years in either case. Instances such as these help to explain the popular reaction against the prescription of any definite period of preparation.

The following is believed to be a complete list of periods of preparation of as much as three years, that were in force at any date prior to the Civil War, omitting only a few very early requirements which, in Massachusetts and New York, were sometimes even more stringent than the rules quoted.[2]

Massachusetts, 1810–36, by rule of court, for admission to the lower courts, five years, or for college graduates, three years; for admission to the Supreme Court, as attorney, two years subsequent practice; for admission as counsellor, two years practice subsequent to this.

New York, 1829–46, by rule of court, for admission as attorney to the bar of the Supreme Court, seven years, towards which there might be counted up to four years of classical study pursued after the age of fourteen; for admission as counsellor, three years subsequent practice.

New Jersey, 1767–1817, by rule of court, for attorney, five years (with one year's allowance to college graduates, after 1780); for counsellors, three years subsequent practice. 1817–81, nominally the same, except that the attorney period was reduced by one year.

New Hampshire, 1805–33, by rule of the federated county bars, for admission to the lower courts, five years in the case of applicants qualified, except as regards knowledge of Greek, to enter Dartmouth, three years in the case of college graduates; for admission to the Superior Court, two years subsequent practice. Between 1833 and 1838 the same periods were prescribed by court rule.

[1] A requirement of two years study was not introduced until 1903. In 1760 Patrick Henry was admitted after six weeks private study.

[2] By 1763 the members of the New York City bar had carried their monopolistic tendencies so far as to enter into an agreement not to receive into their offices as clerks any young men who intended to pursue the law as a profession. This was modified the following year into a four-year clerkship for college graduates. The Suffolk County (Boston) bar in 1771 required first a college education, then three years before admission to the lower court, two years before promotion to the Supreme Court, two more years before promotion to barrister, or a total of eleven years after leaving the lower schools.

Vermont, 1826–43, by rule of court, for admission to the lower courts, five years, reducible by two years in the case of college graduates, and by some amount less than two years in the case of a partial college education; for admission to the Supreme Court, two years, or for admission as solicitor in Chancery, three years subsequent practice. 1843–98, nominally the same, except that two and one-half years' allowance was made to college graduates, and the separate provision for solicitors in Chancery was abandoned.

Maine, 1821–37, by act of legislature, seven years in the acquisition of scientific and legal attainments, of which at least three years with a counsellor-at-law.

Northwest Territory, 1799–1800, by act of legislature, for attorney, four years; for counsellor, two years subsequent practice. 1800–02, period for attorney reduced to three years.

Georgia, 1784–89, by act of legislature, five years.

South Carolina, 1796–1812, by act of legislature, four years, with one year's allowance to college graduates.

Pennsylvania, 1788–1903, by rule of court, for admission to the lower court, three years for applicants under, or two years for applicants over, twenty-one at the time they began their law studies; for admission to the Supreme Court, two years subsequent practice. Or for applicants under twenty-one the total of five years might be divided as four plus one.

Delaware, since colonial times, by rule of court, three years.

In *Connecticut* and *Rhode Island*, the traditional requirement imposed by the local bars, and subsequently adopted by rule of court, was three years, with one year's allowance to college graduates.

Louisiana, 1813–19, by rule of court, three years.

Michigan, 1827–46, by act of legislature, three years.

Maryland, prior to 1832, by rule of court, three years in some cases.

CHAPTER VII

EXTINCTION AND REVIVAL OF EDUCATIONAL REQUIREMENTS FOR ADMISSION

BEFORE the close of the eighteenth century, the Massachusetts legislature attempted to overthrow the monopoly of legal practice possessed by regularly admitted attorneys-at-law. Litigants were authorized to be represented in court by attorneys-in-fact, appointed by themselves. This legislation was subsequently copied in other states, including New Hampshire, New York and Michigan, but, like the privilege possessed by litigants everywhere of appearing in their own behalf, it produced no important practical results.[1] Democratic agitation was compelled to take the form, not of providing amateur substitutes for professional lawyers, but of weakening, or even destroying, educational requirements for admission into this governing class.

1. *Attack on the Requirement of a Prescribed Period of Preparation*

As will be shown in the next chapter, the situation in Virginia was colored for a time by reliance upon an examination, rather than upon an apprenticeship period, as an appropriate method of ensuring educational qualifications. Outside of Virginia, however, and in Virginia itself after the Revolution, no effective examining machinery was established for many years. Attacks were none the less directed against the prescribed period in jurisdictions where it had already been introduced, while in Virginia and in many western states it failed to obtain even a temporary foothold. These attacks were manifested more often in acts than in words, and represented a general attitude toward governmental problems rather than peculiar hostility to lawyers as such. The essentially governmental privilege of practicing law was thrown more widely open for the same reason that qualifications for governmental office were reduced. The movement was grounded in the political philosophy of an insurgent democracy, which was fighting its way into con-

[1] In New York the act was immediately declared unconstitutional. *McKoan* v. *Devries*, 3 Barbour (1848), 196. In Michigan the Constitution of 1850 itself entitled any suitor "to prosecute or defend his suit either in his own proper person or by an attorney or agent of his choice," but in 1880, by a process of reasoning not easy to follow, the Court held that this did not authorize the appearance as "agent" of other than a duly admitted attorney. The provision was repealed in 1908. *Cobb* v. *Judge of the Superior Court*, 43 Mich. (1880) 289.

trol of our governmental machinery, and was less concerned with making sure that privileges bestowed by the state should be well bestowed than with guarding against their again becoming a monopoly of a favored class in the community.

The successive steps in this democratizing process varied, of course, in the different jurisdictions, and are difficult to express in generalized form. The following figures bring out, perhaps as clearly as in any other way, how widespread was the tendency to lower educational standards.

In 1800 a definite period of preparation seems to have been prescribed in fourteen out of the nineteen states or organized territories into which the Union was then divided, or in nearly three-fourths of the total number.[1]

In 1840 it was required in not more than eleven out of thirty jurisdictions, or one-third of the total.[2] Significant testimony as to the strength of western feeling in regard to this matter is provided by the "blanket clause" of the first state constitution of Ohio. This continued in force the existing laws of the Northwest Territory, not inconsistent with that instrument, with the single exception of so much of the legislation affecting admission to the bar "as relates to the term of time which the applicant shall have studied law, his residence within the territory, and the term of time which he shall have practiced as an attorney-at-law before he can be admitted to the degree of a counsellor-at-law."[3]

In 1860 a definite period of study was required in only nine out of thirty-nine jurisdictions, or one-fourth the total number.[4] North Caro-

[1] Known to exist at this date in Massachusetts, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Northwest Territory, Indiana Territory. In addition, Georgia and Tennessee either already had this requirement or introduced it within a very few years. Vermont had introduced the requirement in 1787, but almost immediately abolished it. The four jurisdictions in which the requirement had not even begun to develop, so far as known, were Virginia, Kentucky, North Carolina and the District of Columbia.

[2] Abolished in both sections of the old Northwest Territory (Indiana Territory and Ohio) in 1801 and 1802; in Georgia, 1806; in Tennessee, 1809; in South Carolina, 1812. Reduced in New Jersey, 1817, and in Maryland, 1832. Abolished in Massachusetts, 1836, and in its daughter state, Maine, 1837; in New Hampshire, 1838. On the other hand, it was reëstablished in Vermont by 1817, and was introduced, in weakened form, into North Carolina, 1819, Ohio, 1819, and Michigan, 1827. The requirement also existed in Missouri between 1807 and 1830, and was introduced, only to be promptly abolished, into Louisiana, Mississippi, Arkansas, Wisconsin and Iowa.

[3] *Constitution of 1802*, Schedule, sec. 4.

[4] Abolished by New York and Michigan in 1846. Not introduced elsewhere, even temporarily, between 1840 and 1860.

lina was now the only southern state, and Ohio the only state or territory west of the Alleghanies, to retain the requirement even nominally.

Coupled with this tendency to do away with the requirement altogether was a reduction of its length even in the states where it survived, and a weakening of the administrative regulations needed for its enforcement. In Maryland, North Carolina and Ohio the period was now only two years.[1] Formal "apprenticeship" had long given way to mere "clerkship" under an attorney, and in Ohio there was demanded only an attorney's certificate that the applicant had "regularly and attentively studied law." That is to say, the study need not even have been under the attorney's direction, as in the original territorial law. Pennsylvania was the only state to require law students to register prior to beginning their period of study. Probably in no state were the rules rigorously administered.

2. *Climax of the Democratic Movement*

As a rule, where no period of preparation, however brief or however laxly enforced, was prescribed, the principle at least of an educated bar had been preserved in an examining system. As will be shown in the following chapter, the machinery provided for this purpose was so inadequate that in general no further action was deemed necessary by those who were interested only in facilitating admission to the legal profession. In a few states, however, mandatory legislation was enacted to prevent the courts from utilizing their examining powers in such manner as to defeat the end in view. Massachusetts led the way, in an act adopted in 1836 and in force for forty years, under which admission might be secured in either of two ways. Applicants with or without previous training might take their chances with the courts. If, however, they were of good moral character, and had studied law for three years in an attorney's office, then the courts were obliged to admit them. A few years later, the democratic movement reached its culmination in four states in the shape of legislation abolishing all educational requirements whatsoever. Every citizen twenty-one years of age, in New Hampshire after 1842, every citizen of Maine after 1843, every resident of Wisconsin after 1849, and every voter in Indiana after 1851, was entitled to be admitted to practice in these states

[1] For the length of the period in the other six states, see the rules quoted in the preceding chapter.

merely on proof of good moral character. The Maine and Wisconsin legislation was repealed in 1859. It was not until 1872 that the New Hampshire act was amended in such manner as to restore power to the courts. The Indiana privilege was unfortunately embedded in the state constitution, the amending process of which is so difficult that no means has yet been found to dislodge it.

Drastic though this legislation was, it did not represent quite the extreme demands of the period. It totally abolished the power of the courts to require any educational qualifications for admission to the bar, but it did not destroy the traditional conception of a bar, as a governmental order or public profession, distinguished from the general body of citizens. The precise privilege that was widened under the language of the legislation, as enacted, was the privilege of admission into this profession, not the immediate privilege of practicing law. There remained the institution of admitting courts, with power to pass upon the non-educational qualifications that the applicant must still satisfy. This result was secured by a very strict, though perfectly logical, construction of the language used in the various acts,[1] and it may be suspected that in some cases a contributory factor was the presence on legislative committees of conservative practitioners who understood the precise legal effect of the phraseology used better than did the rank and file of legislators. The Michigan constitutional convention of 1850 voted repeatedly to extend to every person of the age of twenty-one years, of good moral character, "the right to practice in any court," and it was only in committee that there was substituted for this the provision already cited[2] that looked equally broad, but that proved in practice to amount to little. A Utah territorial act, in force between 1852 and 1874, seems to be the only instance since early colonial times of legislation that attempted technically to abolish a professional bar in this country; and if a distinction between counsellors and attorneys was contemplated, even this was not a genuine exception.[3]

[1] See *Matter of William Brenn*, 3 Howard's Practice (N. Y., 1847), 169, for the proper construction of a provision of the New York constitution of 1846, which did not go quite so far in the direction of abolishing educational requirements as in the four instances cited, but provided in similar language that applicants, possessing the qualifications recited, should "be entitled to admission to practice in all the courts of the state." The decision pointed out the distinction between the right to be admitted and the right to practice, and confirmed the power of the legislature to determine who should exercise the admitting power.

[2] Page 85, note.

[3] This Mormon legislation made it the duty of all courts "to grant a hearing as coun-

The argument for the extreme democratic doctrine was phrased as follows by a contemporary radical:[1]

> "Any man may give either medicine or gospel and collect his dues. . . . I want the lawyers to stand upon the same platform with the priests and the doctors. A man's property is no better than his life or his soul. We allow a man to tamper with both soul and body, but not with property."

This misleading analogy rested upon at least three false assumptions. One was that, if the state protects property rights more carefully than it does physical health or eternal salvation, this inconsistency can be removed only by weakening the protection already accorded to property, instead of by according better protection to "soul and body." A second error was the notion that lawyers exist only to protect property rights, and that all other rights claimed by individuals under the law are self-enforcing and do not similarly require courts and professional lawyers to maintain them. A third untenable proposition was that a professional class, exercising this all-important governmental function, could be safely freed from governmental control—that for the first time in Anglo-American law, the bar should be regarded not as a public profession, qualifications for admission to which may be made either high or low as public policy may seem to require, but instead as a mere private money-making occupation.

It is fortunate that, into whatever excesses our law-makers were led, in their revolt against high educational requirements for admission into the profession, at least they did not take this final step. So long as the conception of a professional bar was retained, it remained possible to encourage educational standards even in states where they could not be required by law. Thus, in New Hampshire and Maine not only did the better class of applicants continue, as a matter of course, actually

sel to any person of good moral character, chosen by any person or persons to prosecute or defend a case in which he, she or they are a party." So far this was merely an attempt, similar to that made by states cited at the beginning of this section, to authorize amateurs to compete with professionals. It was also provided, however, that counsel might not recover payment for services rendered; and the further idealistic provision was added that an attorney must "present all the facts in the case whether they are calculated to make against his client or not."

A North Carolina reconstruction act, in force for only two years after 1869, provided that any citizen of good moral character and paying a license tax of $20 should be allowed to practice law in the courts. The prerequisite of a license played the same part in defining the professional class of lawyers that formal admission by the courts did elsewhere.

[1] Elbridge G. Gale of Michigan, *Proceedings of Constitutional Convention of 1850*, p. 812.

to have some legal training, but by the simple device of professional ostracism, directed against those who insisted upon entering under the statute, a "regular" or inner bar came into existence. The New Hampshire Superior Court countenanced this distinction by rules in force between 1859 and 1872.[1] Indiana, since 1881, has had a statute that authorizes the admitting courts to set an optional examination in legal learning, and to enter the names of successful candidates upon a special roll; while in case an applicant should refuse to waive his constitutional right to be examined only as to his moral character, the courts are empowered to give publicity to his refusal, by forcing him to prove his character before a jury. In compliance with this suggestion the Supreme Court and several local courts instituted a "Roll of Honor."[2]

These devices are of special interest as indicating the possibility of dividing the profession on educational lines, when the state itself provides a unitary bar and demands little or nothing in the way of educational qualifications.

3. *Revival of Interest in Educational Standards*

Even before the Civil War, a reaction had set in against the mandatory legislation described in the preceding section, establishing the rights of applicants possessing certain qualifications to be admitted without examination.[3] The war itself exerted an influence in restoring educational standards in two ways: First, its actual conduct taught us the meaning and the value of efficiency in public life, and the need of democracy for the expert, at least in military operations. Secondly, its aftermath of corruption made certain political reforms indispensable, and thus brought reform as a whole into fashion. The strengthening of bar admission requirements became part of the orthodox programme of reform; the more readily, because it was not difficult to trace a connection between the existing low standards of admission to the bar

[1] 4 *Rep. Am. Bar Ass.* (1881) 239, 242; *Rules of Court*, 38 N. H. (1859) 589.

[2] 2 *National Bar Association Proceedings* (1889), 55. The federal courts, sitting in Indiana, have also done something to remedy the situation by departing from their usual rule of admitting to their own bars any attorney entitled to admission to the state courts. In 1877 they adopted a rule requiring an examination in the case of applicants not already admitted to any other federal court, or not admitted to any state supreme court on examination.

[3] See above, page 88, for the dates, beginning 1859, at which power to enquire into the educational qualifications of applicants was restored to the courts in Maine, Wisconsin and New Hampshire. The Massachusetts courts regained full control in 1876.

and the existing corruption of judges and politicians.[1] With so much to be done on all sides, this particular movement proceeded slowly for a while. The principal contribution of the decade 1870–80 to law reform was the organization, by selected elements at the bar, of propagandist bar associations, which faced bar admissions as one of their many important problems.[2] The direct influence of the most notable of these organizations—the American Bar Association, organized in 1878—did not make itself felt until some years later. Meanwhile, however, substantial progress was made. In view of the fact that the prescription of a definite period of law study had never ceased to exist in a minority of the states, while no adequate examining machinery existed anywhere, the new movement naturally showed itself first in an extension of the principle of a prescribed period into other jurisdictions. In 1860 only nine out of thirty-nine states or territories, or less than one-fourth the total, prescribed any period of study.[3] In 1890 the number had risen to twenty-three out of forty-nine, or nearly one-half,[4]

[1] So, notably, in the best remembered instance of the prevailing low standards of public morality—the Tweed ring conspiracy in New York City. "The general standard of professional learning and obligation was high during the first forty years of the nineteenth century. About 1840 it began to decline, and its tendency was steadily downwards until about 1870, when it reached its lowest ebb, when even the Bench was invaded by corruption, and found support in a portion of the Bar, and when tortured laws—that worst kind of torture—were in the metropolis the rule rather than the exception." *Report of the Committee on Admission to the Bar made to the Association of the Bar of the City of New York*, 1876, p. 11.

[2] See Chapters XIX–XXII.

[3] Connecticut, Rhode Island, Vermont, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, Ohio.

[4] About 1860 the standing examining committee, for that portion of Illinois which included Chicago, instituted a requirement of two years law study. Although the entire system was abolished in 1865, this was probably a powerful contributory cause for a general introduction of the requirement into the newer western states and territories (Colorado 1861, Washington 1863, Montana 1865, Nebraska 1866, Kansas 1868, Wyoming 1869, Oregon before 1870, Idaho 1875, Minnesota 1889). The required period was reëstablished in South Carolina 1868, New York 1871, Illinois 1871, New Hampshire 1872, Louisiana 1877, Maine 1881, Iowa 1884, Wisconsin 1885, and was introduced into the District of Columbia 1875. It was not until 1890 that Connecticut established it by general rule, which held all counties up to the standard already maintained by some. Sometimes, when no formal requirement existed, the examiners required the applicant to state the duration of his studies, and took this factor into account when making their decision; so notably in certain Massachusetts counties.

On the other hand, the requirement was abolished in North Carolina 1869, Idaho 1887. A South Carolina enactment of 1878, designed to stiffen the requirement, led to legislation the following year abolishing it altogether; and a similar attempt on the part of the New Jersey Supreme Court in 1881 called forth legislation that produced practically the same result, by exempting from the requirement any applicant who could persuade five counsellors to certify to his "unusual aptitude."

and in 1917 to thirty-six out of forty-nine, or three-fourths of the total—the same proportion as in 1800.[1] Together with the more general adoption of this requirement went also a lengthening of the period. In 1860 only six jurisdictions demanded as much as three years, sometimes with one year's allowance for college graduates; and as late as 1890 there were only nine such states.[2] At present, thanks in great part to the influence of the American Bar Association, twenty-eight states require three years preparation.[3]

In connection with this reintroduction and lengthening of the prescribed period, occasional efforts were made to restore the principle of a graded profession.[4] These experiments were quickly abandoned, however, and New Jersey is now the only state in which this principle is recognized.[5] Even here the additional privileges secured by admission as counsellor are of little importance. The idea is practically dead, so far as practitioners' thought is concerned.[6] It may be noted, however, that in 1877 Dean Langdell of Harvard suggested a division of the profession as a means of reconciling the conflict, shortly to be described, between the state authorities and the schools. He described the type of lawyers that Harvard was endeavoring to train as "counsellors" or "advocates" as distinguished from "attorneys." It is not clear that he meant anything more than that the Harvard law school graduate was sure to be so well trained that his right to practice should not be ques-

[1] See above, page 86.

[2] Connecticut, Rhode Island, New Hampshire, Vermont, New York, Pennsylvania, Delaware, District of Columbia, Oregon. Of these Vermont and Pennsylvania were the only ones to require more than three years for full privileges.

[3] The remaining states (besides Indiana) are principally southern or border states, but include a few in the far West.

[4] Wyoming, 1869–82, for admission to lower courts, 2 years; for admission to Supreme Court, 1 year of subsequent practice. New York, 1877–82, for attorney, 3 years, with 1 year's allowance to college graduates; for counsellor, 2 years subsequent practice. Alabama, 1886–98, for admission to lower courts, no period prescribed; for admission to Supreme Court, 2 years subsequent practice after age of twenty-one.

[5] It lingered in Vermont until 1897, and in Pennsylvania until 1903; for details see above, page 84. In New Jersey 3 years practice as attorney prior to admission as counsellor has been nominally required since 1767. The repeal of the Five Counsellors Act in 1900 restored a semblance of vitality to the system. The number of years preparation required prior to admission as attorney is now 3.

[6] It survives in the rule for admission to the bar of the Supreme Court of the United States: "It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past of the highest courts of the states to which they respectively belong, and that their private and professional character shall appear to be fair."

tioned by the state, except in a perfunctory way. And as the controversy was soon adjusted in a manner satisfactory to Harvard, the suggestion was not pressed. We have here the origin, however, of an undercurrent of academic thought which since then has occasionally risen to the surface.

CHAPTER VIII

DEVELOPMENT OF MACHINERY FOR EXAMINING APPLICANTS

A BAR examination system, such as it was, came into existence in this country in three different ways. In New England the lawyers developed the examination as a supplement to their own requirement that a definite apprenticeship must be served before admission to the legal fraternity. In Virginia the examination was rather in the nature of a substitute for the entire conception of a fraternity of lawyers. It was a licensing test imposed by the state upon a body of subordinate officials. The other older states, at an early stage in their history, combined these two plans and points of view. Individual members of the fraternity trained future lawyers during a definite term of years, but in addition the courts, if they did not examine applicants themselves, at least organized—as they omitted to do in New England till a later date—the examining machinery.

1. *Early New England System*

So long as the bar continued to control its own membership, the emphasis was laid upon the completion of the prescribed period. In the beginning only the individual preceptor need be satisfied. The bar would recommend as of course, and the court would accept, an applicant vouched for by a brother member.[1] Gradually, greater formality came to be introduced. The judgment of the preceptor would be checked by that of the whole body of the bar. This led to committee

[1] Compare the language used bv Jeremiah Gridley, in moving for the admission of Josiah Quincy and John Adams to the inferior court in Boston, in 1758: "Of Mr. Quincy, it is sufficient for me to say he has lived three years with Mr. Pratt; of Mr. Adams, as he is unknown to your honors, it is necessary to say that he has lived between two and three years with Mr. Putnam of Worcester, has a good character from him and all others who know him, and that he was with me the other day several hours, and I take it, he is qualified to study the law by his scholarship, and that he has made a very considerable, a very great proficiency in the principles of the law, and therefore, that the client's interest may be safely intrusted in his hands. I therefore recommend him, with the consent of the bar, to your honors for the oath." The oath having been taken, young Adams "shook hands with the bar, and received their congratulations, and invited them over to Stone's to drink some punch." He continued to study the law diligently, and three years later was admitted to the Superior Court. Adams, *Life and Works*, 1850, II, 49, 133.

organization in the larger or more active bars. In New Hampshire the federated bars, in 1805, established examining committees in every county. The more important function of this organized professional supervision was to determine whether a young man possessed sufficient general education to be permitted to begin the study of the law. To an extent difficult to ascertain at this late date, this supervision came also to include an examination of the applicant's knowledge of the law after he had completed his apprenticeship or law-office period. Throughout Connecticut, as early as 1795, this final examination was conducted by the county bars, either themselves or through committees.

The tendencies of the system are most clearly traceable in Ontario, where it has never been interfered with by the legislature. Formal entrance examinations were instituted here in 1819; formal examinations for the "call to the bar," at the conclusion of the five-year period, were not instituted until 1831. The curriculum having been thus defined, the Law Society established, in 1855, lectureships leading up to this definite goal, and in 1873 a fully organized law school.[1] This development was assisted by the manner in which legal education, and indeed all higher education, was organized in the mother country. In general, higher education in all European countries has proceeded through these same three stages: first, a fixed residential requirement extending over a definite period of years—in theory the apprenticeship idea, in practice often a meaningless formality; second, an increasingly stringent examination at the expiration of this period—this also being an inheritance of the guild idea that the apprentice must give final proof that he has taken advantage of his opportunities; third and last, the organization of lectureship courses or schools to provide systematic training for the student. The influence of these ideas upon legal education in England and Canada has already been pointed out.[2] This same line of development was started in New England, and was carried far enough to make it natural that when the state ousted the bar from control, some sort of examination should still be retained—conducted now, however, by the court[3] or by a committee[4] or com-

[1] The history is traced in detail by W. R. (Mr. Justice) Riddell in *The Legal Profession in Upper Canada in its Early Periods*, published by the Law Society in 1916.

[2] Part I, Chapters I and II.

[3] So Vermont, 1826–43; Massachusetts 1836–76; New Hampshire 1838–42.

[4] Committee appointed by the Supreme Court in Rhode Island, 1857.

mittees[1] of lawyers appointed by it, instead of by the county bars or by committees appointed by these.

By 1840 this transition to state control had been effected in New England outside of Connecticut and Rhode Island. In these two states and in Vermont, the requirement of a definite period of preparation survived, in addition to the examination. In Massachusetts, however, in 1836, and for forty years thereafter, an option was extended to applicants: if they had studied three years in a local office, they were entitled to admission; otherwise they might be admitted on examination. Finally, Maine in 1837 and New Hampshire in 1838 provided an examination only, and within a very few years abolished even this.[2] It is clear that the transfer of control from the profession to the state, while justifiable on political grounds, had results which, from the purely educational point of view, were unfortunate in the extreme. The democratic movement tended to destroy systematic training, the only foundation upon which an effective educational system can be safely built, and to leave in its place (if anything at all) the unworkable scheme of an unsupported examination.

2. *Early Virginia System*

Colonial Virginia presented a sharp contrast to New England. Social lines were more strongly marked. Planters' sons freely took advantage of the supposed educational advantages of the English Inns of Court.[3] Home grown practitioners in the lower courts, reinforced by attorney immigrants, were looked down upon as a class who, receiving general condemnation, were thus encouraged to deserve it. New England lawyers had also to overcome early prejudice. There, however, the two branches slowly fused as the two grades of a united profession, and fought their way up to popular respect and political influence. In Virginia, on the other hand, the separation between the upper and lower bar was maintained. If an attorney secured the privilege of appearing

[1] Committees appointed by the Supreme Court for each county in Massachusetts 1806–10, Vermont 1817–26, Maine 1837–43. Appointed by the County Courts in Vermont after 1843. Appointed by local courts or divisions of courts in certain Connecticut counties from an early date.

[2] See above, page 87.

[3] Warren quotes a statement by Jefferson that in the middle of the eighteenth century the most eminent counsel of the bar of the General Court were all English-trained barristers. See also above, page 76.

before the upper courts, he lost the right to appear before the lower. It is to the political and social influence of the upper class that we must ascribe legislation enacted in 1732, designed to remedy the evils then alleged to exist in the lower order.[1] As revived and amended in 1745 this legislation provided for control of the lower by the upper bar, through a system of licenses. The General Court appointed a permanent examining board, composed of its own members or of attorneys practicing before it, and compensated out of the fees of applicants. No period of apprenticeship was prescribed, and in view of the general repute of lower-court attorneys probably none was desired. Moral character was to be proved, not by the recommendation of such attorneys, but by a certificate from the County Court, in which the power to grant admission to its own bar was still formally vested. The obligation upon the applicant to secure a license from the central examining board was not a substitute for the exercise of its powers by the local court, but a wedge driven into the middle of the admitting process, an intermediate check constructed from a different point of view. After the applicant, on the strength of his character certificate, had been admitted to the examination, and had secured his license, then back he went again to the County Court to complete, through taking of the oath, the process of admission proper.[2]

If reliance could ever be placed upon an unsupported examination, this Virginia machinery was undoubtedly singularly complete. Had it been allowed to survive the Revolution unchanged, and had some method of caring for the upper bar also been evolved, that rested upon sounder

[1] The preamble states: "The number of unskilful attorneys practicing in county courts being a great grievance to the country in respect to their neglect and mismanagement of their clients' causes and other foul practices. . . ."

[2] The Virginia system was influential throughout the South for obvious reasons. Moreover, the early territorial development of the country occurred during the reign of the "Virginia dynasty" at Washington. In 1800, W. H. Harrison of this state was appointed Governor, and hence member of the Legislative Council, of Indiana Territory. Not only did this include all the territory lying between Ohio and the Mississippi River, but in 1804 all of the Louisiana cession outside the present state of that name was placed under the jurisdiction of this Council. Hence in many western states, also, Virginia ideas were planted. Usually, though not always, the requirement that the applicant must return to the local court to take the oath was dropped; "license," in such cases, became equivalent to "admission." On the other hand, the requirement that moral character shall be proved by a local court was a hardy plant. Even in states where the required period, after 1860, was revived, this feature of a local court certificate as distinguished from one granted by one or more attorneys, often remains, denoting early Virginia, as opposed to New England, influence. Contrast, for instance, Illinois with Ohio.

educational foundations than this and yet avoided the extremes of New England Federalism, the history of our legal profession might have been very different. The Revisors of the Virginia laws, however (Jefferson and Wythe), introduced modifications better calculated to safeguard the political ideals of the people than the educational requirements of the profession. In the first place, the licensing system was now made to cover uniformly all branches of the bar, with the result that all gradations of rank and privilege immediately disappeared.[1] In the second place, instead of a compensated board, the judges of the General Court themselves now granted the license "after examination." The subsequent decentralization of the admitting authority, when circuit judges were established, has already been described.[2] This further weakening of the examination system was of little practical importance, however, so long as in any case the judges were expected to do all the work. It is only under most unusual conditions that any court or judge, in our overworked judicial system, can possess the time or the technical skill to devise, either personally or with the assistance of attorneys drafted for the occasion, a static test suited to eliminate the unfit—even assuming that such a test be inherently possible. Our courts have usually endeavored to resist extreme democratic pressure so far as lay within their power. But without even the tradition of a study period to support them, there was little they could do. Simple justice as between applicants demanded that virtually everybody be let in, when the test itself was clearly inadequate. The situation in New England became sufficiently demoralized, but in Virginia and in the many states influenced by it requirements sank to an even lower level.

3. *General Reliance upon an Inadequate Examination System*

In the other older states the apprenticeship system was permitted to develop for a time along its natural lines. Before it reached the elaborate stage attained in New England, however, courts or legislatures intervened, not so much to check as to guide and assist professional control. At a comparatively early date the state determined the period of apprenticeship that must be served under a member of the profession. The state likewise organized an examining system, the actual administration of

[1] This latter development was contrary to Jefferson's intention. See letter to Wythe, quoted below, page 404.

[2] See above, page 69.

which was committed to practitioners. For a time there was some hesitation as to the relationship between these two types of educational test. In New Jersey between 1752 and 1767, and in South Carolina between 1785 and 1796, the examination system existed—as many years later in Massachusetts—as an alternative to the requirement of several years clerkship. Very promptly, however, applicants were obliged to satisfy both tests. The early development of this cumulative requirement influenced later developments in New England and in the West; and everywhere the democratic reaction showed itself in two ways: first, in a tendency to drop or forbid the apprenticeship requirement, leaving only the newer examination system in force; second, in the failure to construct adequate examining machinery. The examination was conducted either by the judges themselves, as under the later Virginia plan,[1] or at best by a committee[2] or committees[3] appointed by the courts. Mere casual designations of lawyers who happened to be present in the court sometimes developed into standing committees not distinguishable for practical purposes from permanent boards. Doubtless they were intermittently zealous in the performance of their duties. The capital feature, however, of the colonial Virginia plan—a single board, the members of which were entitled to compensation for their labors—was omitted.

Thus, in one way or another, the principle of a supplementary examination, conducted by the profession itself, disappeared. In its place arose an independent examination, conducted by the state. The important educational test was no longer, as in all other countries, evidence of having been in contact with practitioners or schools during a definite term of years. Instead, we have the notion, peculiar to this country, of a "bar examination" as being on the whole sufficient in itself, even though it be sometimes reinforced by a study requirement. Courts or their committees are supposed to be able, by a process of tasting,

[1] North Carolina after 1760, Georgia after 1784, Maryland from an early date, and prevailingly in New York from as early as 1787. So also New Jersey from as early as 1752, South Carolina from as early as 1785, until superseded in both states by committee examinations.

[2] New Jersey after 1805. Until 1837 this committee was appointed by the Supreme Court from among the serjeants; thereafter from the counsellors.

[3] Pennsylvania and Delaware from an early date. South Carolina after 1796. Committee examinations were inaugurated by the New York Supreme Court, so far as concerned admission to its own bar, in 1830, and were employed to some extent by the Court of Chancery and the local courts; they never took root, however, as did the county board system in Pennsylvania.

to decide what applicants have been sufficiently well baked in some educational oven. The purely theoretical distinction between the old and the new ideas must not be stated too broadly. As lay judges disappeared, the bench became definitely a part of the profession as well as an organ of the state. Examinations conducted by judges are still examinations conducted by lawyers. This is even more obviously the case where the committee or board system has been introduced. If, finally, the requirement of a prescribed period is retained or revived, we have a system outwardly resembling that from which we departed. There still remains the important distinction, however, that the examining machinery is organized and controlled by the state. The profession is no longer an *imperium in imperio* entrusted as a whole with important functions closely connected with our political life, and—the better to accomplish this end—permitted to determine its own membership. Government acts now on the individual lawyer. His personal relationship to the state is emphasized. The official obligation of judges, of examining committees, and of the ordinary practitioner, supersedes, in all cases of conflict, the professional bond. The individual lawyer has ceased to be responsible solely to his professional brethren while the profession itself is responsible to the state. The middle element of corporate responsibility and control has been short-circuited. It is a general tendency of governmental development to cut out, in this manner, what in a very broad sense may be termed feudalistic remains, and to get down to the individual. If we were to become a democratic community in fact as well as in name, it was necessary for us to take the action we did with regard to lawyers. There is no reason why the state, having destroyed professional responsibility, should not build up educational standards of its own. Prior to the Civil War, however, these were not democracy's primary concern. This was the era of broadening suffrage, removal of property qualifications for office, rotation in office, attacks upon the United States Bank, destruction of privilege in many forms. Hence both the willingness to regard an unsupported bar examination as sufficient protection for the community, and the failure to provide adequate machinery even for this. Constructive work was to come later.

4. *Unpaid Boards or Standing Committees*

The first effort to improve the examining machinery took the form of substituting for direct judicial examination a system of referring ap-

plicants to uncompensated boards or standing committees. In Pennsylvania, Delaware, Vermont, and possibly in certain Connecticut counties, this practice had never been abandoned. Shortly before the Civil War it was revived in Maine, and was substituted for the decadent court bar system in Rhode Island. It was introduced also for a short time into Illinois (for that one of the three "grand divisions" of the state which included Chicago), and into Louisiana (for New Orleans only). During the decade beginning 1860, a few far western territories took up the idea. As late as 1870, however, there seem to have been not more than nine jurisdictions that contained what could by any stretch of the imagination be termed standing local committees or boards, while a centralized examining body is known with certainty to have existed only in Rhode Island; the New Jersey eighteenth century committee of counsellors was soon quietly to disappear, if it had not already done so. Everywhere else, either a single court operated directly, or—in New Hampshire and Indiana—there was no educational test, or—in twenty-nine jurisdictions—separate courts or judges conducted examinations, either personally or with the assistance of the attorneys present or of *ad hoc* committees.[1] During the following decade a few additional states introduced permanent examining bodies.[2] Written examinations existed in New York, and in parts of Massachusetts and Illinois.[3] Pennsylvania had a preliminary examination upon general education, at least in certain counties.

[1] The line between an *ad hoc* committee, appointed by a court on the spur of the moment to give a perfunctory examination to applicants for admission, and a standing committee that takes its responsibilities more seriously, is not always easy to determine. Including doubtful cases, the jurisdictions that in 1870 had something in the nature of special examining machinery were Pennsylvania, Delaware, Connecticut, Vermont, Maine, South Carolina, Colorado, Montana, New Mexico and (central committees) New Jersey and Rhode Island.

For contemporary judgments as to the worthlessness of the prevailing system of bar examinations, see Wellman, F. L., "Admission to the Bar," 15 *American Law Review* (1881), 295; and Hunt, Carleton, "Report of the Committee on Legal Education," 4 *Rep. Am. Bar Ass.* (1881) 237.

[2] Massachusetts 1876; Maryland (for certain courts only) 1876; New York 1877; New Hampshire (central committee) 1878; Ohio (central committee) 1879; Louisiana 1880. By this time also the local Appellate Courts, to which the Illinois Supreme Court had delegated the control over admissions granted to it by the legislature, usually exercised their powers through committees, and applications in the District of Columbia were customarily referred to a committee.

[3] Traces of a written examination are found also at this date in Nevada and Idaho.

The earliest written bar examinations in the United States seem to have been those instituted by the Massachusetts Court of Common Pleas, between 1855 and 1859, for applicants who could not show three years study.

5. *Central Examining Boards Financed out of Applicants' Fees*

The machinery described in the preceding section was still obviously ineffective. Meanwhile, however, there had been an important contemporary movement in England to improve all branches of education and public life by requiring stringent examinations of all applicants for academic degrees or for official positions.[1] This movement had its most important reverberation, on this side of the water, in the agitation for civil service reform, which dates from this period; but in a broader way it helped to bring "examinations" in general into fashion. These were regarded as a sort of educational and political cure-all for our ills. Less in a spirit of conscious imitation than because this sort of thing was in the air, the strengthening of bar examination machinery came to be considered as, on the whole, the most important reform of which the legal profession stood in need as a means for ensuring efficiency in its members.[2] Along with this general and somewhat exaggerated emphasis upon the examination came the realization of the particular step that was needed to make it effective. This was, of course, to establish a central board, whose members should be held to their duties by appropriate financial arrangements.

This development first occurred in the small state of New Hampshire. In 1872 the Superior Court, having finally regained from the legislature power to enquire into the "suitable qualifications" of applicants, attempted to revive the old county bar recommending system. Since this proved ineffective under modern conditions, the court ruled in 1876 that applicants were to be examined by itself or by a committee appointed by it. In 1878 this committee was converted into a permanent board, and in 1880 it was allowed to finance itself out of applicants' fees. Thus quite unconsciously the identical machinery that Jefferson had abandoned in Virginia was reproduced, a century later, in New England.

[1] The principal events in the English examination movement were the throwing open of the London University examinations in 1858, the strengthening of the solicitor's examination in 1860, and the introduction of competitive examinations for the civil service in 1870.

[2] The substantial identity of our early democratization of the bar with the theory of rotation in office (efforts to prevent the development of a bureaucracy), and the further identity of the movement to strengthen bar examinations in this country with the introduction of Civil Service reform ideas, seem not to have been generally recognized. Compare, however, as to this latter connection, Wellman, F. L., "Admission to the Bar," 15 *American Law Review* (1881), 315, and White, Colonel Robert, *West Virginia Bar Association Proceedings*, 1889, p. 52.

By 1890 three other states—Ohio, Wisconsin and Connecticut—with some variations of detail, had inaugurated similar systems. The Ohio Supreme Court in 1882 followed the same course as the New Hampshire tribunal by allowing compensation to its own recently established centralized examining committee. The Wisconsin legislature in 1885, on the other hand, left the decentralized admission system of this state as it was, but required all applicants to be referred to a committee appointed by the Supreme Court for examination, before returning to their respective courts for formal admission.[1] In these three states the committees were appointed annually. New Jersey, when it revived its uncompensated committee in 1881, was the first state to introduce the feature, common to administrative boards, of overlapping terms of office, with the object of preventing any sudden break in continuity and tradition. The Connecticut Superior Court, in 1890, was the first to combine this feature with the principle of financing the board out of the fees of applicants.

By 1890, then, reasonably satisfactory models for a permanent central examining board had been developed by four jurisdictions out of forty-nine. New York's adoption of the idea in 1894 gave it a great impetus, and under the influence of the American Bar Association it has now come to be regarded as an indispensable feature of an orthodox bar admission system. In 1917 central boards of bar examiners functioned, with many minor variations in form, in thirty-seven jurisdictions, or three-fourths of the total, usually with more or less adequate financial arrangements.

Reasons for the ineffective operation of this now prevalent machinery will be set forth on subsequent pages.[2]

[1] Compare the licensing "wedge" driven by Virginia into its colonial "each court to each" system, page 97.

[2] Pages 267–270, 408–409; and compare Chapter III, sec. 8.

PART III

RISE AND MULTIPLICATION OF LAW SCHOOLS

CHAPTER IX

LAW IN ANGLO-AMERICAN COLLEGES AND UNIVERSITIES PRIOR TO THE REVOLUTION

1. *Part played by the English Universities in the Training of Lawyers*

IT has already been pointed out[1] that the connection between colleges or universities and the law is far less intimate even to-day in the British Empire and the United States than in Continental Europe and Latin America. Visitors from France or Germany, from Brazil or the Argentine, have some difficulty in understanding why our universities, which are, or ought to be, the natural home of learning, do not control education for the law. In so far as the many factors which have contributed to this state of affairs can be reduced to a single ultimate cause, it may perhaps be found in the remoteness of the British Islands from Rome, the great lawgiver of western civilization. When Europe gradually reëstablished ordered institutions after the chaos produced by the barbarian invasions, scholars preserved the tradition of the Roman law. They incorporated with it elements derived from local custom, and were looked to by the authorities of the budding states to provide systemizations or codes of law. Soon there arose law schools possessing dignity and prestige. These combined with similar associations of teachers or of students in medicine, theology and philosophy, to form universities which, in their typical form, consisted of these four faculties. For modern examples of the way in which rulers have leaned upon university-trained scholars to draft their laws for them we have the famous Code Napoleon, and the Civil Code adopted within the present generation by the German Empire, but this dependent attitude goes back to the much earlier "reception" of the Roman law, as it is technically termed: the adoption of this body of law, suitably modified, as the basis of legislation throughout Continental Europe. While the legislative authorities of the state have of course remained in ultimate control, the scholars, acting in a proposing or advisory capacity, have in a broad sense made the law. Important questions of public policy are determined by the state, but the technical shaping of the law is entrusted to experts. That the training of the lawyer should similarly be entrusted to those who make the law has—again with certain modifications—naturally followed.

[1] Pages 11-14.

The English universities followed those of the Continent in their interest in Roman law, but they never succeeded in imposing their legal conceptions upon the state authorities. Various partial explanations for their failure may be assigned. During a period when all European universities were still dominated by ecclesiastical influences, temporal rulers asserted their independence of the Roman Church somewhat earlier and more consistently in England than on the Continent. Oxford and Cambridge enjoyed a lesser prestige than the early Italian law schools or the great University of Paris. Absentee rulers accorded a greater measure of responsibility to their own judicial appointees—established, in short, what were essentially bureaucratic organs of government, which, proceeding with a characteristic devotion to precedent, built up the common law and fostered around their central courts their own system of training. As already suggested, perhaps British remoteness and British insularity provide the ultimate explanation for all these phenomena. The fact is more important than the reasons for it. Although, just as Continental law contains elements absorbed from local custom, so English law has been tinctured with a Romanic infusion, nevertheless the basis of the two systems is entirely distinct. Roman law was never "received" in England and in countries which inherit from it. Instead, the common law, developing out of customs and the decisions of the courts, became more and more firmly implanted. Practitioners and judges developed rules of precedent, with which legislatures, representing the dynamic element in lawmaking, later, in a more or less haphazard way, interfered. The universities, however, committed to the study of the Roman law, were sidetracked. They were neither asked to help, nor did they have any sympathy with a type of law so distinct from their traditional aims. A chasm developed between the barristers with their practical law, on the one side, and the universities with their academic interest in a body of law that had no present relation to reality, on the other. This chasm we are still engaged in slowly bridging.

What made the chasm less complete than it otherwise would have been was the spirit of caste. In spite of Napoleon's sneer at England as a nation of shopkeepers, a strong social prejudice against trade existed in the eighteenth century, and indeed long afterwards. Public-service professions, the emoluments of which were paid by the state — diplomacy, the army, the established church, the bench — were the oc-

cupations suited to gentlemen. Now, while attorneys were undeniably tradesmen, supporting themselves like physicians and apothecaries out of the fees of private clients, barristers, on the other hand, were cadet judges, so to speak. And until they were actually elevated to the bench, or to other state-paid offices, a convenient fiction enabled them, with full dignity, to accept private pay. They received not fees, but "honoraria," not collectible by legal process. Meanwhile, the universities were also the special resort of the ruling class, and offered indeed at this time greater social than educational advantages to those who were, or who aspired to be considered, gentlemen. William Blackstone, the grandson of an apothecary, the son of a silk merchant, and himself successively barrister-at-law, Member of Parliament, judge of the Court of Common Pleas, and Knight, was a typical example both of progress in the social scale and of the manner in which university and law study were in fact commonly combined by being prosecuted by the same person. Under the loose rules of residence long in force both in the universities and in the Inns of Court, he was registered with both simultaneously. He received his academic degree of Bachelor of Civil Laws[1] from Oxford at the age of twenty-two, and his call to the bar (professional degree of barrister[2]) from the Middle Temple a year later. Even to-day this is the typical way in which university and law training are combined for admission to the English bar. If the universities do something more for the future lawyer than they did in Blackstone's student days, this still is not the principal reason why a university training for barristers is preferred. Entirely irrespective of any organic connection between the university curriculum and knowledge of the law, university life then as now supplied points of personal contact of social and professional value to the future lawyer. As Blackstone put it, "Gentlemen may here associate with gentlemen of their own rank and degree."[3] The system encourages narrow class sympathies, arrogance

[1] It may be well to remind the layman that in accepted legal terminology "civil" is used in three entirely distinct ways. As applied to courts, or in such expressions as "civilians," the "civil service," etc., it is used to exclude the military establishment. As applied to procedure, it refers to the ordinary courts of law and equity as distinguished from those possessing criminal jurisdiction. As applied to law, when most accurately employed it refers to the Roman system of law or modern outgrowths of the same, as distinguished from the English common law, including equity, or as distinguished from ecclesiastical or canon law.

[2] See below, page 164, and compare page 18.

[3] *Commentaries*, Introductory Lecture.

and toadyism, but also a sense of class responsibility or *noblesse oblige* —the seamy and the handsome side of caste tradition.[1]

2. *Blackstone and his Influence upon this Country*

Just before the loss of the American colonies, England had taken the first step toward coördinating the university curriculum with professional legal education. Blackstone, at the age of thirty, abandoned for the time being the attempt to build up a London practice, and conceived the idea that he might profitably deliver lectures on the common law in connection with professional work at Oxford. Five years later (1758), he became the first incumbent of a new university chair—the Vinerian professorship of English Law—and thus established the principle that the cultivation of the common law is a pursuit not beneath the dignity of an ancient university. Blackstone's elaborate apology, in his Introductory Lecture, for regarding the common law as a proper *academical* study, should be read in full in order to appreciate how radical was this innovation. His ambitions went even further. He aspired to found a resident college for common-law students, similar to a civil-law college long maintained in Cambridge. He was not supported in this project by the university authorities, and resigned his professorship in 1766, but not before he had begun the publication of his *Commentaries*, the first American edition of which appeared in 1771–72. This admirable systemization of the confused mass of English precedents exerted a profound influence upon the legal development of this country. In the first flush of enthusiastic independence from the mother country, there was a strong movement to repudiate all traces of the English common law; and although it is now generally held

[1] These expressions refer, of course, to England as it was before the War with Germany. In thus emphasizing the importance of the original English type of university as a means of establishing or confirming useful personal connections, there is no attempt to belittle the strictly educational value of this type of institution at its best, transplanted to this country in the form of the endowed college. Still less is it denied that among the merits of this type of education perhaps the chief is that it discourages the early specialization characteristic of the Continental university. In the conflict between cultural and vocational theories of education, which in one form or another is always with us, the writer strongly inclines to the former camp, believing that however elusive and however difficult to ensure, some provision must be made in our educational scheme for other than bread-and-butter interests. On the whole, the English university stands most prominently for this ideal. The point that is here made is that the survival of the type through periods of decadence is explained by the fact that it satisfied a natural social demand, even when it did not supply a broadly rounded education.

either that this law never was really repudiated, or, to the extent that it was so, that it was subsequently again "received," scholars are still disputing as to precisely what they mean when they declare that the English common law persists in this country. It is hardly an exaggeration to say that what we actually took over from England was simply Blackstone.

The transition was effected somewhat as follows: The laity had a general idea that American law, so far as not embodied in constitutions, was to be constructed by the legislatures, and that that was all there was to it. Every uninstructed person naturally pictures the law as equivalent to legislation, even to-day. As a matter of fact, the judges were confronted with the practical task of rendering decisions in cases not covered by legislation. To some extent they tried to decide these cases by the light of reason and abstract justice, but soon felt the necessity of leaning upon precedent as a more concrete and safer guide. Prior to 1789, however, no American law reports had been published, and for many years after this there was no great body of strictly American precedents, published or unpublished. The judges were thus driven back upon English precedents. Had these not been recently systematized, it is possible that, in our early patriotic reaction against everything English, the codifying spirit, already expressed in state constitutions, would have produced also statutory codes, behind which judges would not have gone. Had this taken place, our law would have been organized upon the Continental principle, according to which at least the general principles are found in legislation, and judicial discretion is limited to filling in details. The general content of the English common law would have been incorporated into these codes in the same way as the European civil law had absorbed local customs. Blackstone, however, provided an admirably comprehensive, lucid and up-to-date systemization of the English common law, suitable alike as a reference authority for the courts and as a textbook for students. The easiest course to pursue was to follow him in all cases where constitutions or legislatures had not spoken. This original authority was then supplemented by the actual English reports and by the gradually accumulating body of American decisions. The legal fraternity were already accustomed to this general manner of procedure, and the laity had no clear understanding of what was going on and were easily satisfied with any system that actually worked. Thus we perpetuated, or restored, the English tradition that judges, in their decisions, declare the main

body of the law in the light of whatever precedents they choose to recognize, while the people, through their legislatures, merely express their superior will in regard to special topics in which they are particularly interested. Blackstone's *Commentaries*, especially after the publication of St. George Tucker's Americanized version in 1803, continued, until hopelessly antiquated, to be the core of the whole system.

3. *Law in the Colonial Colleges*

At the time of the separation from the mother country, accordingly, the following tradition in regard to the proper relationship between a university and legal education was already implanted in this country: First, it was generally felt that, for those who aspired to reach the higher ranks of the profession, a university education was desirable. Secondly, the advantages to be derived from this education were primarily social and cultural; it was by no means contemplated that the university should undertake the technical training which the practitioner already provided under the apprenticeship system. Thirdly, the law had, however, recently come to be regarded as a fit subject for academic treatment; one to which the university might well devote greater attention than it had been in the habit of doing, both in the general interest of all its students and in the particular interest of those who might subsequently undertake professional law studies. This tradition we had to apply or adjust to our own cruder facilities of higher education as best we might. We had no university embracing, like those of Oxford and Cambridge, separate colleges united by a common bond. Nine meagerly endowed colleges, having no organic connection with one another, and separated by wide distances, were all that the new-born country had to offer. The expansion of these units into complete institutions—the later binding together of these local institutions into national associations working together for a common end—all this was still far in the future.

The first element in this English tradition—that a college education, irrespective of its content, is desirable—had already found expression in the bar admission rules of at least two colonies. In New York, as early as 1756, the rules, while not uniform throughout the state, usually required college graduates to study three years under a counsellor as against a period of seven years for other applicants. In Massachusetts the Suffolk County rules of 1771 required all applicants

to have a college education, or a liberal education equivalent thereto, before entering upon the period of office study.

The second element of the tradition — that strictly professional training was the business of the profession itself—was assumed without question everywhere. Even in Virginia, although no requirement of a definite period of study has been found, aspirants for the upper branch of the bar who had not been to the English Inns of Court undoubtedly studied law, as did Jefferson under George Wythe, in the office of a lawyer. It should be noted in this connection, however, that already two technical professorships in medicine had been established — one in 1765 at Benjamin Franklin's College of Philadelphia, later to develop into the University of Pennsylvania, and one two years afterwards at King's College of New York, later Columbia University. Long before this, moreover, postgraduate professional work in divinity had been organized in the colleges.[1] However fallacious is the analogy between other professions and the law, this analogy has been a constant factor in our educational development. The early hospitality displayed by the colleges toward technical training in other lines should not be lost sight of in tracing the history of legal education.

Finally, as regards the third traditional idea—that colleges should have something to say concerning the rules governing the relations between men — the announcement by Harvard, as early as 1642, of second-year lectures upon "Ethicks and Politicks at convenient distances of time," is significant both of the bond that was originally felt to exist between these two subjects, and of their early divorce, at least in academic circles. Under the prevailing theological influences, Ethics, either under this name or under the labels of "Moral Philosophy" or of "Natural Law," easily established itself as an orthodox college subject everywhere. Separate professorships were early instituted therein.[2] Subsequently logic and metaphysics were added, and these chairs grad-

[1] The Hollis Professor of Divinity at Harvard doubtless conducted postgraduate work from his first appointment in 1721. Certainly in 1780 this graduate organization was fully established (Quincy, Josiah, *History of Harvard University*, 1840, I, 535; II, 259). William and Mary organized postgraduate professional work in divinity, distinct from its philosophical schools, in 1727 (Tyler, Lyon G., *Early Courses and Professors at William and Mary College*, 1904, p. 2). All this, of course, was in the direct line of English tradition.

[2] So in King's College in 1762, and again in 1773. The claim put forward in the Columbia law school announcement, that this latter chair of Natural Law, occupied for a very brief time by a clergyman, was "the first professorship of law in America," is misleading.

ually developed into our modern philosophical departments. "Politicks," on the other hand, either disappeared entirely, as at Harvard, or gradually cut loose both from morality and from philosophy and developed along lines of its own. In the first curriculum of King's College (1755) we find "the Chief Principles of Law and Government, together with History, Sacred and Profane;" these studies, together with the ethics group ("Metaphysics, Logic and Moral Philosophy with something of Criticism") constituted the entire curriculum of the fourth year. The plan of study adopted for College of Philadelphia seniors in 1756 differed from this principally in being somewhat more detailed. Civil law was now specifically mentioned in the politics group; and the object of these studies was clearly stated. They were designed to bring the student "to a knowledge and practical sense of his position as a man and a citizen."[1] In 1763 King's changed its president and its policy, and deluged its students with classics in their senior year. Place was found, however, for "Grot: de B. and P. or Pufendorf."[2] This was apparently the first appearance of international law in the American college. In 1774 King's College received a grant of land from Governor Tryon (on which it never realized) for the purpose of establishing "Tryonian Professors, the first Professor so to be appointed to be a professor of the Municipal[3] Laws of England." Superficial or abortive as were all these experiments, it is none the less significant that in Philadelphia and New York the main trunk of academic education had already sent forth a political branch, and that this branch had itself begun to ramify. Systematic instruction in law, as a subdivision of politics, now distinguished from ethics, was at least an idea familiar to academic thought when the doors of the colonial colleges were closed by the Revolution.[4]

[1] Logic and metaphysics were first to be studied in order to develop the student's powers of thought. Then the main object of the senior year was to be secured "by a course embracing ethics, natural and civil law, and an introduction to civil history, to laws and governments, to trade and commerce."

[2] Grotius, *De jure belli et pacis*, 1625; Pufendorf, *De jure naturae et gentium*, 1672.

[3] The layman must again be warned that "municipal law," in the sense brought into vogue by Blackstone, does not mean the law of municipalities. In ordinary language it means the law of the state or nation, as distinguished from international law, natural law (ethics or philosophy), etc. Blackstone himself recognized the ambiguity of the term, but adopted it as less misleading, when applied to England, than "civil law."

Legal terminology is in a shocking condition. Compare, for instance, the various meanings that are attached to the word "practice."

[4] In the other colleges, including Harvard, this political branch was not cultivated at this time, except in so far as it might be incidentally touched upon under "Ethics."

4. *The Problem presented after the Revolution*

What, then, was to be the line of development after the Revolution? Was the English tradition to be preserved, that an academic education, whether or not it embraces political studies, is desirable but not essential for all good citizens — lawyers among the rest — but that actual professional instruction may best be left to the practitioners? Or, following the precedent established in medicine and theology, may some or all of this technical training be given under academic auspices, and a new complex institution thus arise, properly to be termed a university? And, in case the latter course should be followed, what relation should obtain between the old college and the new professional work? Should the college continue to be merely an optional preliminary to professional work, as in the case of medicine? Or should the university's professional work be strictly postgraduate, as was apparently the tendency in theology? And finally, to the extent that the university might properly attempt to displace the practitioner in the field of professional education in the law, what should be the policy of the state in its bar admission requirements? Should it merely place the university, in its competition for students, on an equal footing with the practitioner, giving it an opportunity to prove its claim as to the superior efficacy of its methods? Or should university law preparation be encouraged as inherently superior to office work, and if so, to what extent and how?

Even to-day the public, the profession and the universities are far from having reached an agreement in regard to more than one of these problems. It is now universally admitted that at least a part of the process of preparing applicants for the bar is a task that the university may properly assume. The following chapters will show how difficult it was to establish even this proposition against the conservative forces of tradition.

The four main branches of the Harvard tree were first, Latin; second, Greek; third, Logic, Metaphysics, Ethics; fourth, Natural Philosophy, Geography, Astronomy and the Elements of Mathematics — each confided to a separate tutor. There was also a professorship in this latter branch, in Divinity, and in Hebrew and other Oriental languages.

On the general question of the gradual emergence of "law" as a topic distinct from ethics, politics, etc., see below, pages 135 and 300, note 1; and compare pages 148, 155, 296 and 302.

CHAPTER X

JEFFERSON'S WORK IN VIRGINIA AND KENTUCKY

1. *William and Mary College*

TO Thomas Jefferson belongs the credit of initiating university instruction in professional law in this country. His task was the easier for the reason that the apprenticeship system was not so firmly established in Virginia as in the northern states; but his chief asset was his own daring and constructive mind, which had no respect for tradition as such and erred, if at all, on the side of too broad and too original conceptions. Believing that even private law study was preferable to office work,[1] and cherishing a comprehensive plan, only partially realized, for the reorganization of education in Virginia, he first revolutionized, in 1779, the organization of his *alma mater*, William and Mary College. His conception of a university, in so far as it owed anything to foreign models, followed the later Continental rather than the later English type: the various faculties were thought of as coördinated, rather than as branching out of a central college of arts or philosophy. With characteristic audacity, however, Jefferson departed from the orthodox four faculties—Philosophy, Theology, Medicine and Law. Discarding altogether the already established theological faculty along with all classical instruction, he accepted Medicine and Law, while Philosophy he split into four parts, thus securing a symmetrical coördination of six faculties. Finally, in order to adapt this scheme to the small resources and charter restrictions of the college, each faculty was reduced to a single professorship, termed, in accordance with local tradition, a "school." One of these six faculty chairs, retained by the president, Bishop Madison, included "Moral Philosophy and the Laws of Nature and of Nations." Another, filled by Jefferson's law teacher and fellow Revisor of the Virginia statutes, Chancellor George Wythe, was the school of "Law and Police." Wythe's course included not merely lectures on municipal (professional) law, of which Blackstone early became the basis,[2] and moot courts, an inheritance from the English Inns,

[1] Outlining, in 1790, a course of study for a young relative, he writes: "It is a general practice to study the law in the office of some lawyer. This indeed gives to the student the advantages of his instruction. But I have ever seen that the services expected in return have been more than the instructions have been worth." *Writings*, V, 180.

[2] When John Marshall attended the school in 1780, the lectures seem to have been

but also lectures on government and moot legislatures, designed to train students in parliamentary law. Practical law and practical politics, in short, already differentiated but still combined, were fully recognized as fit subjects to be pursued within academic shades, under the instruction of a practitioner. International law was pushed to one side as an appendage to the related topic of ethics. The earliest recorded law degree in the United States was conferred here in 1793 upon William H. Cabell, later Governor of the state, and presiding judge of the Court of Appeals.[1]

This school, which, except as temporarily closed by the Revolutionary War, continued in existence till 1861,[2] exerted its greatest influence upon legal education through a published work. St. George Tucker, who succeeded Wythe as professor of law in 1789, explains, in the introduction to his annotated edition of Blackstone, that he had retained the latter as the basis of his law school lectures because he had no time to devise a systematic classification of his own. And indeed the *Commentaries*, with notes adapting it to American usage, provided for the time being a sufficiently satisfactory textbook of American law. Tucker's work, published in 1803, fixed the Blackstone tradition in this country, and by ostensibly compressing all legal knowledge within the covers of a single book, undoubtedly discouraged the organization of law schools elsewhere. It made the apprenticeship method of teaching law practicable and sufficient. Indirectly, however, the William and Mary school doubtless stimulated early abortive attempts, shortly to be described, to organize university law schools in the middle states. And two other successful southern schools are directly traceable to this source.

a mere running commentary upon legal heads arranged — as commonly in reference compilations — alphabetically. See digest of Marshall's notes in Beveridge, Albert J., *Life of John Marshall*, 1916, I, 174. In 1784, however, Governor Jefferson told President Stiles of Yale that Blackstone was the basis of the law lectures (*Literary Diary of Ezra Stiles*, 1901, III, 126).

[1] For a student's description of the moot courts and legislatures, as conducted in 1780, see 9 *William and Mary College Quarterly* (1900), 80. President Lyon G. Tyler's *Early Courses and Professors at William and Mary College*, 1904, is the best general account of the school. See also references collected by Warren, pp. 343 ff., and "Laws and Regulations, 1837," *Bulletin of the College of William and Mary*, vol. XI, no. 2 (1917).

[2] Wythe had about 40 students in 1780. In 1839, the year of the college's greatest prosperity prior to the Civil War, about 30, out of a total attendance of 140, were law students.

The school was revived in 1920.

2. *Transylvania University*

In 1799 Transylvania University at Lexington, Kentucky, appointed a William and Mary graduate, George Nicholas, "Professor of Law and Politics." The professorship seems to have remained in more or less continuous existence until 1879. Henry Clay was one of the early incumbents. Nothing definite is known as to its curriculum; but its title and its historical origin sufficiently indicate its character. For a generation this was the only organized centre of legal education west of the Alleghanies.[1]

3. *University of Virginia*

In Virginia itself, Jefferson's educational plans culminated in the opening of the University of Virginia in 1825. His original design, which was merely an expansion of his William and Mary scheme, called for ten distinct professorships or "schools," three of which were to cover the field of what that eminent Harvard graduate and independent member of Jefferson's "Republican" party, Mr. Justice Story of the Supreme Court of the United States, had recently described as "moral, political and juridical science."[2] These three schools corresponded roughly with Story's analysis. Private ethics was to be combined with general grammar, rhetoric, and belles-lettres and the fine arts under a professor of "Ideology." A professor of "Government" was to give instruction in the Law of Nature and Nations, Political Economy and "History, being interwoven with politics and law." Coördinate with these and with the seven other schools, a professorship of Municipal Law was to be established. Practical exigencies, however, reduced the three professorships concerned with the laws of human conduct to two, one of Ethics and Moral Science and one of Law and Politics.[3] The

[1] It started with about 19 students. In 1821–22 its attendance was 49, as against Litchfield's 26. In 1842–43, under George Robertson, it had 75 students, being second only to Harvard. See Peter, Robert and Johanna, *Transylvania University, Its origin, rise, decline and fall*, 1896; and Lewis, A. F., *History of Higher Education in Kentucky*, 1899.

Transylvania (or Kentucky University, as it was designated from 1865 till 1908) later revived its law school from 1892 till 1895, and again from 1905 till 1912, when the attempt was definitely abandoned.

[2] In his review of David Hoffman's *Course of Legal Study*. See below, page 124. Note the expansion of Harvard's old formula of "Ethicks and Politicks," by the subdivision of the second element.

[3] The complete scope of the law school course, as enacted by the Rectors and Visitors in 1825, just prior to Jefferson's death, was stated as follows: "In the School of

latter chair was filled in 1826, after failure to secure a more distinguished incumbent of sound Republican views,[1] by a middle-aged practitioner, John T. Lomax. Under him and his successors both law and politics—or, to use the modern term, government—continued to be taught together, as in William and Mary. As the field grew too large to be cultivated by one man, an additional professor, specializing in Constitutional Law, was appointed in 1851, and the old school or single professorship thus became the present department of law of the University of Virginia. International law, under the Blackstonian influence, likewise continued to be offered by the law department rather than by the college. Political economy and history, however, were crowded out of the law course, being given in other schools when given at all.[2] For many years a law student was encouraged, though not required, to register in more than one school of the university.[3]

Law shall be taught the common and statute law, that of the Chancery, the laws Feudal, Civil, Mercatorial, Maritime, and of Nature and Nations; and also the principles of Government and Political Economy." Compare Appendix, pages 454–456.

[1] In a letter addressed to Madison in 1826, Jefferson wrote: "In the selection of our law professor, we must be rigorously attentive to his political principles." He observes that lawyers had been originally whigs, but that "after the honied Mansfieldism of Blackstone became the students' hornbook, from that moment that profession (the nursery of our Congress) began to slide into toryism, and nearly all the young brood of lawyers now are of that hue. They suppose themselves indeed to be whigs, because they no longer know what whiggism or republicanism means. It is in our seminary that that vestal flame is to be kept alive; it is thence to spread anew over our own and the sister states." See Adams, *Thomas Jefferson and the University of Virginia*, pp. 137–140, both for the passage, and for a discussion, appropriate to present day conditions, of the extent to which university authorities are justified in drawing political lines in making faculty appointments.

[2] See below, pages 146, 296, for the gradual transformation also of "Constitutional Law" from a governmental into a technical legal topic, in other law schools; and see pages 155, 302, for the gradual conformity of this school to the prevailing practice.

[3] Herbert B. Adams' *Thomas Jefferson and the University of Virginia*, 1888, is the best authority on the early University of Virginia law school. For Jefferson's views on legal education, in addition to the references found here, see *Writings of Thomas Jefferson*, ed. P. L. Ford, 1892–99, V, pp. 172, 180. See also Patton, John S., *Jefferson, Cabell, and the University of Virginia*, 1906.

CHAPTER XI

UNIVERSITY EXPERIMENTS IN THE MIDDLE ATLANTIC STATES

1. *Columbia College*

A MOST ambitious organization of higher education was projected in New York in 1784. Old King's College was to be revived under the name of Columbia, and, together with schools and colleges subsequently to be established, was to form part of the state-wide and state-controlled "University of New York," governed by a Board of Regents. Columbia itself was to add to its Arts Faculty the traditional professional faculties of Divinity, Medicine and Law. This latter was to consist of three professors: one of "the Law of Nature and Nations;" one of "the Roman Civil Law;" and one of "Municipal Law." The project failed for want of funds. In 1787 Columbia regained its independence under its separate board of trustees, and the "University of the State of New York" (as the State Board of Regents is still officially termed) was relegated to its present position of general administrative control, more and more restricted to non-collegiate education. So far as legal education was concerned, there was then adopted a plan resembling that of Jefferson, but less symmetrical, in that the traditional college was not split up but retained its unified organization. The professor of Geography and German in the college, Dr. Gross, had already developed a comprehensive history course. Moral Philosophy was also entrusted to him, and under this title he organized a course which included government and international law. In addition, a young Federalist politician—James Kent—was appointed professor of law, and in 1794 began delivering a course of lectures. Like Blackstone, Kent considered the municipal law (including both government and the common law) to be his special province, but he prefaced his discussion of this with general lectures which encroached somewhat upon his academic colleague's field. Already there was discernible that duplication of effort that appears in several American universities to-day—the teaching of identical subjects from two different points of view in the government or "political science" department of the college and in the separately organized law school. Following Blackstone also and the Philadelphia experiment described in the next paragraph, which antedated his own lectures by a few years, Kent entertained no design of appealing only

to future law practitioners, nor of conducting a complete law course even for them. "Nothing I apprehend is to be taught here," he announced in his introductory lecture, "but what may be usefully known by every Gentleman of Polite Education, but is essential to be known by those whose intentions are to pursue the science of the Law as a practical Profession." Somewhat inconsistently, however, with the preservation of the academic ideal, the lectures were thrown open to outsiders, who constituted the bulk of such few students as attended.

The failure of the experiment may be ascribed, partly to the fact that Kent was drawn away from legal education to more important pursuits; partly to the fact that in this mere stop-gap work he was not seriously pursuing a single definite mission.[1] Resigning his professorship in 1798 to begin his distinguished career on the bench, he returned to Columbia in 1824 to revive his lecture course. After a year and a half, however, he tired of the labor, and although his name was carried on the catalogue till his death in 1847, he delivered no more lectures. He thus found time to produce the first systematic treatise upon American law, conceived in the general spirit of Blackstone's *Commentaries* but independently composed, as distinguished from the mere adaptation of Blackstone that St. George Tucker had already produced a generation previously.[2] The first edition of Kent's famous *Commentaries* appeared in four successive volumes between the years 1826 and 1830. Columbia, like William and Mary, exerted its greatest influence upon legal education through stimulating productive scholarship, and thereby carried the development of American law one stage further.[3]

[1] During his first academic year of 1794–95 he delivered a course of twenty-six lectures to seven college students and thirty-six lawyers and law students not connected with the college. The following year he delivered thirty-one lectures to two students besides his own clerk. The following year he had no students at all, the next year six or eight. Apparently the design was to cover the entire course in a single year. The outline of the course published in 1795 contains 37 lectures: 3 "Preliminary Dissertations;" 10 "On the Constitution and Laws of the United States" dealing with the organization of the federal government, including practice in the federal courts; 24 "On the Constitution and Laws of the State of New York," of which the first three dealt with what we should to-day term governmental organization; the remainder with the usual common-law heads.

[2] See above, page 117. Kent's title to priority in the production of a systematic treatise upon American law, modeled in a general way upon Blackstone, rests upon the extent of the field that he attempted to cover. Zephaniah Swift (see Appendix, page 431), in his *System of the Laws of the State of Connecticut*, 1795, was the first to perform the same service for the law of a single state.

[3] The Law of Nature and Nations continued to be taught as an academic study. In 1810, under the title of "Principles of Public Law," these subjects were included in

2. University of Pennsylvania

Similar attempts in Philadelphia and Baltimore produced similar but less important results. Benjamin Franklin's College of Philadelphia, revived in 1789 and merged two years later with the new University of Pennsylvania, inaugurated in 1790 a three-year law course under James Wilson, Justice of the Supreme Court of the United States—Philadelphia being at this time the national capital. Three lectures were to be delivered weekly at six o'clock in the evening, with additional so-called law exercises every Saturday. The opening lecture was attended by President and Mrs. Washington, the members of Congress and other persons of distinction.

The non-vocational Blackstonian aim of the course was expressed in the following language: "The obvious design of the plan is to furnish a rational and useful entertainment to gentlemen of all professions, and in particular to assist in forming the legislator, the Magistrate and the 'Lawyer.'" In connection with this design, Wilson was the first to attempt the ambitious project which even Kent later could not quite complete—the restatement of Blackstone in American terms. He wasted the entire first year of his lecture course, however, upon introductory generalities, including international law. During the second year he covered the field of governmental organization in the United States, as a subdivision (following Blackstone) of the Law of Persons; he started also upon Criminal Law, but before the close of the year he abandoned the course, though until his death in 1798 he retained his nominal position as university professor. In 1817 the law course was revived under Charles W. Hare, who planned to devote three successive years, first to "Natural Jurisprudence," second to "International Jurispru-

the department of "Science of Mind and Morals." President Duer (1830–42), himself a lawyer, lectured upon Constitutional Law. For the work of William H. Betts and Francis Lieber, leading up to the revival of technical instruction under Dwight in 1858, see below, page 158, and compare page 333.

See Kent's *Introductory Lecture to a Course of Law Lectures*, 1794; *Dissertations, being the Preliminary Part of a course of Law Lectures*, 1795; *Lecture introductory to a Course of law lectures*, 1824; *Commentaries on American Law*, 1826–30; for evidence of how closely his completed work conformed to his original outline, prepared thirty years before.

For general references, see *History of Columbia University, 1754–1904*, especially pp. 64, 78, 91–92, 335 ff.; also William Kent's *Memoirs and Letters of James Kent*, 1898, p. 77; and, for the later Dwight school, Dwight's own account in 1 *Green Bag* (1889), 141, "Columbia College Law School, New York;" Matthews, Brander, *These Many Years*, 1917, pp. 133–137; Kenny, Courtney, 36 *N. S. Journal of the Society of Comparative Legislation* (1916), 185.

dence," third to "Jurisprudence of the United States and Pennsylvania." After a single year, however, Mr. Hare's health gave way, doubtless under the strain of doing justice to this programme. By 1834 the chair of law had been formally abolished.[1]

3. *University of Maryland*

In some ways the most interesting of these middle states experiments was that conducted in Baltimore. In the two other large cities the attempt to graft a professional law faculty upon an older academic college was an extension of a movement already started in medicine. In Maryland, however, no strong academic college antedating the Revolution existed. An attempt in 1784 to create a state university which should embrace, somewhat on the plan of the contemporary "University of the State of New York," two colleges recently established on the western and on the eastern shores, was definitely abandoned in 1806. Meanwhile, in several large cities local medical associations had begun to assume control over education for their profession, in somewhat the same manner as the county bar associations of New England, and indeed had proceeded farther in this direction than the American bar has ever gone. They not merely prescribed rules under which their individual members should train apprentices, but also—like the lawyers later in England and Canada—they organized central lecture courses or schools of their own. With some confusion of terminology, due to varying European precedents, these medical associations were sometimes known as "faculties" or "colleges;" the latter term was naturally applied to the developed school, especially as it assumed visible form in the shape of a building. In 1807 the College of Physicians and Surgeons arose thus in New York, and eventually ousted Columbia College from the field of medical education, only to be itself later absorbed into the greater Columbia University. Later in the same year an incorporated College of Medicine of Maryland started in Baltimore in the same way, and in 1812 the attempt was made to expand this into a university. A charter

[1] See Klingelsmith, Margaret C., "History of the Department of Law," in *University of Pennsylvania Proceedings at the Dedication of the New Building of the Department of Law*, 1900, pp. 213 ff.; also Wood, George B., "History of the University of Pennsylvania from its Origin to the Year 1827," 3 *Memoirs of the Historical Society of Pennsylvania* (1834), 109.

Wilson's lectures, so far as completed, were published in 1804. They also constitute the bulk of James DeWitt Andrew's *Works of James Wilson*, 1896.

The law department was revived under Judge George Sharswood in 1850.

was secured for the University of Maryland, which was to be organized by having the Medical Faculty annex to itself the three other traditional faculties. Collectively, the members of all four faculties were to constitute the corporation under the name of Regents with a general governing power; each faculty, however, was to be self-perpetuating and with power to appoint its own dean, professors and lecturers.

The attempt to build up faculties of Theology and of Arts and Sciences came to nothing.[1] A Law Faculty of six was, however, promptly appointed, and one of their number, David Hoffman, set himself, with commendable industry and conscientiousness, to the task of organizing the prospective curriculum. It took him four years to complete his task. Publishing the result in 1817, under the title of "A Course of Legal Study," he had the satisfaction of having it declared by Mr. Justice Story, in an elaborate contemporary review, to be "the most perfect system for the study of the law which has ever been offered to the public."[2] The course was organized under thirteen titles, and included not merely Moral and Political Philosophy, what we should to-day designate Government, and the various heads of practitioners' law, but also International Law, Roman Law and Political Economy.[3] Story estimated that it would take seven years to complete the course. The poverty of the so-called university not permitting instruction to be offered at once, especially in face of competition from Judge Dorsey's private school, Hoffman waited four years more. Then, in 1821, after a loan from the legislature had put the medical school upon its feet, he published a syllabus outlining a slightly modified course[4] in law, which he proposed to cover in two years of ten months each, lecturing one hour daily. Instruction was to begin the following autumn in case a sufficient number of students should apply. It was not until Judge Dorsey's death, however, in 1823, that Hoffman delivered his first lecture, and it took him much longer to cover the ground than he had planned. At the beginning of his third year he was still lecturing upon his third title. To supplement the lectures proper, he had attempted to build up

[1] Much later, St. John's College of Annapolis, one of the constituents of the older university, was for a time affiliated in a nominal union.

[2] Story's review, originally published in the *North American Review* of that year, is reprinted in his *Miscellaneous Writings*, 1835, pp. 223 ff.

[3] See Appendix, pages 454–456.

[4] Political Economy, and the Constitutions and Laws of the Several States, were dropped. Legal Biography and Bibliography and "Professional Deportment" (legal ethics) were added.

three supplementary organizations: a "Maryland Law Institute" (quiz classes); a "Rota" (debating society); and an elaborate system of moot courts, which he hoped would attract junior lawyers as well as students —an idea traced by himself back to the English Inns of Court, but obviously immediately derived from the Philadelphia Law Academy.[1]

Hoffman's hopes were disappointed. At the end of the year he expresses fear that "the whole of our plans . . . is to be eventually defeated by the want of suitable encouragement." At this juncture the university property was seized by the state, and the faculties ousted from control; and although Hoffman, like the medical professors, accepted appointment from the new trustees, a controversy arose over the sale and delivery of his law library to the university. He ceased lecturing in 1832, and shortly thereafter fled to Europe, leaving an unsatisfied judgment behind him. In 1836 he brought out a revised edition of his Course of Study, expanded and brought up to date. In addition to his original thirteen titles, he included a list of nine auxiliary subjects, among which were Geography and History, Oratory, Law Reform, Military Law and Logic. An appendix discussed notebooks, moot courts and debating societies. The work, originally intended for students only, was now dedicated to the profession at large, and was in effect a systematized bibliography of every department of human knowledge that bore in any way upon American law. Judges and practitioners would find it useful for purposes of reference, while students or their teachers could plan appropriate courses of study by its aid. For those who wished to secure admission to the bar without waiting for the full six or seven years required to cover the entire course, three shorter courses, composed of selected subjects, were carefully devised: one to occupy four years; one to occupy three years; one, still briefer, devised for country practitioners. Hoffman's breadth of treatment under each division of his work may be illustrated by a single example. The first of his readings under "Professional Deportment" (legal ethics) was the Proverbs of Solomon.

The fundamental weakness of Hoffman's great design is revealed in his own introduction. American law was already expanding at such a rate that a systematic survey of the entire field became antiquated almost as soon as it was published. In 1844, with his library and a testimonial from Chief Justice Taney as a nucleus, he attempted to start a private law school in Philadelphia, but in 1847 he returned to Europe

[1] Page 432.

to gather material for a history of the world, and before his death in 1854 he had actually published this down to the year 573. His diffusive tendencies contributed to the failure of what was in any case a hopeless task—that of reforming legal education single-handed.[1]

4. *Untimely Nature of these Experiments*

It will be observed that academic authorities in New York, Philadelphia and Baltimore were inclined from the beginning to broaden the scope of organized higher education in these large cities. The fundamental reason for their failure to build up university instruction in law at this time was that the apprenticeship system was still too firmly entrenched. The members of the profession as a whole were satisfied with the system under which they themselves had been trained. Or, if they recognized that anything more was needed, supplementary lectures, given under bar association auspices, seemed to them sufficient.[2]

In New England conditions were similarly unfavorable, and in ad-

[1] Apparently the only financial assistance extended to Hoffman by the University was to provide rented quarters, and to pay him $5000 for the library which he failed to deliver. His energetic publicity campaign included announcements, as pathetic as they were unprofessional, that his educational activities in no way diminished, but rather increased, his capacity to serve private clients.

A full history of the University may be found in Cordell, E. F., *Historical Sketch of the University of Maryland*, 1891. The development of Hoffman's work may be traced in Judge Story's review of the first (1817) edition of his *Course of Legal Study*, already cited; and in the following accessible publications by Hoffman: *Syllabus of a course of lectures on law proposed to be delivered in the University of Maryland*, 1821; *Lecture introductory to a Course of Lectures now delivering in the University of Maryland*, 1823; two additional lectures in the series, printed in 1825 and 1826; *A Course of Legal Study*, second edition, 1836. Under the ambiguous title of *Legal Outlines, Vol. I*, he published the substance of his lectures upon his first title, in 1829; this was reprinted in England, with slight changes, as *Legal Outlines*, 1836. In 1846, as an advertisement for his Philadelphia "Law Institution," he published an extract from his *Course of Legal Study*, under the title *Hints on the Professional Deportment of Lawyers with some Counsel to Law Students*. As a systematic treatise on legal ethics this antedated the better known work of Judge Sharswood.

In 1839 the medical profession regained control of the University. By the vote of two surviving members of the Law Faculty this school was resuscitated thirty years later.

[2] For unsuccessful attempts to accomplish this in Philadelphia and New York, see Appendix, pages 431, 432.

In addition to the three experiments described in the text, Columbian College, in Washington, D. C. (the present George Washington University), opened a law school under Judge William Cranch and W. T. Carroll, in 1826, which was abandoned the following year owing to financial difficulties. See Stockton, C. H., "Historical Sketch," 19 *Records of the Columbia Historical Society* (1916), 99, 124.

dition there was the less need for university instruction in law, for the reason that, as will appear in the following chapter, successful private law schools had been started. The New England colleges were slower, therefore, to enter the field of technical legal education, than were the institutions that had been started more recently in the middle Atlantic states. On the other hand, when they did take this step they profited much by the already established private schools, and so were enabled to succeed. These schools provided the real basis for what was to be the dominant type of university legal education in this country.

CHAPTER XII

EARLY PRIVATE LAW SCHOOLS

THE early private law school was essentially a specialized and elaborated law office. It originated in New England, where the apprenticeship system was most firmly established, spread from there into other states, and was eventually not so much destroyed as absorbed by the college or university law school, whose character it largely determined. As a fully developed, self-conscious institution, announcing itself as such, it appeared slightly later than the early southern college law school. Unlike this artificial creation, however, it developed by imperceptible steps out of a practitioner's class and represents a more primitive type of educational organization. The two conditions requisite for its appearance were, first, a reasonably large and accessible supply of prospective law students, among whom it could market its educational wares; and second, an attitude in the profession favorable to specialization in legal education. Certain states continued at first the tradition, embodied in the English statutes, that it was unethical on the part of a single practitioner either to attempt to corner the profitable educational market for his private gain, or to teach law so extensively as to flood the profession. Suffolk County (Boston) practitioners in 1783—all New Hampshire practitioners in 1805—bound themselves to take not more than three students into their respective offices. In these states the natural line of development was thus checked for a time. It was not until after Harvard had made its first unsuccessful incursion into the field of legal education that professional vigilance in Massachusetts relaxed and that this state fell into line with the general movement.

1. *The Litchfield Law School*

Connecticut, immediately after the Revolution, had proportionally a much greater population, as compared with other states, than she has to-day.[1] She was geographically accessible to students from other states. Her rules for admission to the bar, by prescribing a definite term of office clerkship, protected the practitioners in the educational monopoly

[1] According to a U. S. Census Bureau estimate Connecticut had a population of 203,000 in 1780; greater than New York and greater than Rhode Island, New Hampshire and Vermont combined; about two-thirds the population of Massachusetts.

which they enjoyed as a class; by not limiting the number of students in any office, they permitted free competition inside of the profession. Every lawyer received all the students he could get. The only limitations upon the size of his class were his own organizing and business-getting ability, and the leisure that was left to him from more important occupations. If Jesse Root,[1] for instance, practicing in Hartford before the Revolution, trained future law school teachers rather than established a law school himself, the explanation is to be sought in his subsequent successful career in the army, in the Continental Congress and on the bench. Similarly, his somewhat younger contemporary, Charles Chauncey[2] of New Haven, recorded as a "lecturer on jurisprudence" for forty years, represents a more advanced stage of educational development; but he, too, was diverted by higher ambitions during the early years of his career, and when he retired from the bench in 1793, the famous Litchfield law school had already been started.

The Litchfield school was the creation of Tapping Reeve, a Princeton graduate, who, in addition to his other qualifications for this work, had married into the influential Burr and Edwards families. Admitted to the bar in 1772, after studying under Jesse Root, he settled in a town which, although small, was convenient of access, being an important postroad junction. Deprived of opportunities of practice by the war, and yet protected by his location from its actual depredations, he devoted himself to teaching law, and at the close of the war found himself at the head of a fully developed law school.[3] A successful theological school, conducted by Dr. Bellamy in the neighboring town of Bethlehem, perhaps suggested to Reeve the possibility of developing a similar institution for law students. Several causes contributed to his success. The publication in 1789 of the first volume of American Law Reports by a fellow townsman, Ephraim Kirby, attracted the attention[4] of lawyers to Litchfield. A successful girls' boarding school, started in 1792, was a great help on the social side; Mrs. Reeve informed young Augus-

[1] Admitted to the bar in 1763; Judge of the Superior Court, 1789-96; Chief Justice, 1796-1807.

[2] Admitted to the bar in 1768; State Attorney, 1776; Judge of the Superior Court, 1789-93.

[3] 1784 is the date usually assigned as the foundation of the Litchfield law school. Its catalogue claims 1782. Doubtless it was never born—it simply grew.

[4] This volume of selected Connecticut decisions was followed a year later by the first volume of Dallas' Pennsylvania decisions. For subsequent early Reports, see Warren, *History of the American Bar*, pp. 328 ff.

tus Hand, when he entered the school, that "the young ladies all marry law students." Finally, the influence of Mrs. Reeve's father, the president of Princeton, and of her brother, Aaron Burr, future Vice-President of the United States, and himself a student under Reeve, was undoubtedly exerted in his behalf. His school acquired a national reputation, numbering among its graduates young men from every state.

In 1795 an incident occurred significant of its growing fame. A young Yale graduate and tutor in the college, James Gould, who had begun his law studies under Chauncey when the latter retired from the bench, deserted him for Reeve. Three years later Reeve was himself elevated to the bench and took in Gould as partner. Up to this time the total number of graduates is said to have been 210, or an annual average, since the war, of some ten or fifteen. Gould was a man with teaching experience and inaugurated a more regular system of records. Although during the next ten years the school did not show any great growth, it at least maintained itself, with an attendance sometimes as high as twenty-one, sometimes as low as nine students. In 1809, however, the attendance suddenly rose to thirty-three students, and in 1813, the year of its greatest prosperity, to fifty-five—a figure which for over twenty years stood as a record for American law schools.[1] The school continued in operation for twenty years longer, and with a good attendance as late as 1826. Thereafter, however, it rapidly declined. Its decay may be attributed in part to the rise of rival institutions commanding greater resources and headed by younger men; in part to the general sagging of educational standards throughout the country, incident to the democratic movement, which made the path of any law school hard; and in part to the fact that Gould, like Reeve, allowed himself to be tempted from his sheltered retreat into the glare of public life, and thus not merely neglected his school work, but exposed himself to the disrepute that eventually attached to Federalist judges. Politics, ambition and advancing years had undermined the school even before the advent of Judge Story to Harvard contributed the finishing touch. Before it closed its doors, however, in 1833, it had sent out over a thousand graduates.[2]

[1] A new record was first established by the University of Virginia law school in 1835, with 67 students, followed by Harvard in 1838 with 78.

[2] John C. Calhoun of South Carolina, Horace Mann of Massachusetts, George Y. Mason of Virginia and Levi Woodbury of New Hampshire were among the many distinguished graduates of this school. Graduates who transmitted its traditions into law schools started in other states were Samuel Howe (Northampton, Massachusetts),

The distinguishing characteristics of the school were its systematic course of lectures, delivered daily, and the fact that these were never published. Later college law school instructors, like Tucker, Kent and Story, having worked up lecture courses, were quick to publish their systematized results for the benefit of the profession at large. The inevitable effect of such publication upon students is to diminish the interest and importance of the lectures and to bring textbooks into prominence. This was the more natural in the study of the law, for the reason that under the original apprenticeship system textbooks had always been the source to which students had been referred for the theory of the law. The preceptor's function had been to systematize the readings and to add practical training. Reeve and Gould, however, preserved their system of lectures as a jealously guarded asset of their school. As delivered by Reeve alone in 1794, the course consisted of 139 lectures, covering, under a different arrangement, the same ground as Blackstone, except that the latter's discussion of governmental agencies and of criminal law were omitted.[1] Later, the Law of Sheriffs and Gaolers and Criminal Law were added, and the complete course comprised a daily lecture, lasting from an hour and a quarter to an hour and a half, during a period of fourteen months. This included two vacations of four weeks each; for out-of-state students who would not take Connecticut Practice, it is clear that not more than a single year's residence was contemplated.[2] Students were required to write up their notes carefully, to do collateral reading, and to stand a strict examination every Saturday upon the work of the week. After the retirement of Judge Reeve from active teaching in 1820, a young Yale graduate and alumnus of the school, Jabez W. Huntington, was engaged to conduct these examinations. Doubtless from the beginning, and certainly during the later years of the school, optional moot courts and debating societies were in operation. The school offered a good narrow course in which the com-

Theron Metcalf (Dedham, Massachusetts), Edward King (Cincinnati Law School), William T. Gould (Augusta, Georgia), Amasa Parker (Albany Law School).

The only basis for the assertion sometimes made of a direct connection between the Litchfield and the Yale law schools seems to be that a runaway slave, "Old Grimes," hero of some once famous doggerel lines, having acted as a general factotum to Litchfield students, subsequently occupied a similar position at Yale.

[1] For a fuller discussion of the curriculum, and its influence upon later schools, see Appendix, pages 453–454.

[2] In 1822 Gould wrote that by lecturing a full hour and a half every day except Sunday, and giving a supernumerary lecture one evening a week on Criminal Law, he had once succeeded in covering the entire course in about a year.

mon law was taught as a "system of connected rational principles" rather than as a "code of arbitrary, but authoritative, rules and dogmas." Concerned with law as a "science," in the brief time at its disposal it did not undertake to do for a student everything of a practical nature that needed to be done. Under the rules for admission to the bar prevailing in the several states, attendance at this school, if allowed to count at all,[1] would count for only part of the prescribed period of study.[2]

2. *Imitators of the Litchfield School*

Reeve and Gould having shown the way, various contemporaries attempted to follow their example. A complete list of young practitioners or of elderly judges, who dignify their student classes by terming them "schools," cannot, in the nature of things, be compiled for any period in our history. The occasional office student merges into the institutional school by insensible gradations. More than a dozen such competing ventures are known to have been started during the life of the Litchfield school, in seven states, ranging from Massachusetts to North Carolina. In 1833, the year the Litchfield school expired, private schools were opened also in Georgia and Ohio; six schools, started a few years later, give us an ascertained total of over twenty such experiments prior to 1850. The actual number was probably much greater.[3] The mortality among these private ventures was heavy. Of schools strictly con-

[1] See pages 243 ff.

[2] For general description of the Litchfield law school, see Baldwin, Simeon E., "James Gould," in Lewis, William D., *Great American Lawyers*, II, 435; *Litchfield Law School Catalogue Reprint of 1900;* Kilborn, Dwight C., *Bench and Bar of Litchfield County*, 1909; *Presentation of the Reeve Law School Building to the Litchfield Historical Society*, 1911.

A detailed description of the school in 1822, by Gould, may be found in 1 *United States Law Journal* (1823), 401–405.

Manuscript collections of lectures, exhibiting the curriculum, have been traced as follows: A. Hartford State Library, notes taken by Roger Minor Sherman in 1794, 708 pages, 12mo. B. Yale Law Library, notes undated, bearing autograph of Aaron Burr Reeve, who entered the school in 1802, and died in 1809, 7 volumes, pages not numbered, 4to. C. Yale Law Library, notes taken by Josias H. Coggeshall in 1809–10, 6 volumes, vol. 5 missing, 1640 pages, folio. D. Library of S. E. Baldwin, notes taken by Roger S. Baldwin in 1813, 5 volumes, 1972 pages, folio. The contents of this are analyzed in Governor Baldwin's biography of Gould.

In addition, the Harvard Law Library contains an imperfect set of notes taken by William S. Andrews in 1812–13, 3 volumes, 1521 pages, folio, of antiquarian interest only. Two out of five volumes of notes taken by Alfred Ludlow in 1822 are in the possession of Leroy S. Boyd, Esq., of Washington, D. C.

[3] For list of these schools, see Appendix, pages 431–433.

temporary with Litchfield only one—the Staples-Hitchcock school at New Haven—survived it, and did so only because Yale College took it under her wing. Of the more recently established schools, there were in 1850 only three that had not either formed a similar connection with a college or perished outright. Of these three schools, one was run by a professor of Lafayette College, although not apparently recognized as a department; one, the Lexington (Virginia) Law School, became the law department of Washington and Lee University when this institution was revived after the Civil War; the third, the school conducted at Richmond Hill, North Carolina, by Judge Richmond M. Pearson, lingered as the last example of the Litchfield type until 1878, when it died with its founder. In the absence of endowment, and before the discovery that an independent law school might attract students by conferring the university degree of LL.B., a school of this type was entirely dependent for its success upon the personal force of its proprietor. When he died, or aged, or secured something better to do, there remained no definite asset upon which a successor might build. The significance of this group of schools in our educational development is that they served temporarily to bridge the gap between the students who wished systematized instruction in law and the colleges that were not yet prepared to give it.

CHAPTER XIII

THE NEW ENGLAND COLLEGES

1. *Non-professional Law, prior to the War of 1812*

BETWEEN the Revolutionary War and the War of 1812, the New England colleges—and, following their lead, Princeton and other rural colleges in the middle states—remained about in the condition of King's College and the College of Philadelphia before the Revolution, so far as concerned their attitude toward professional education. For forty years they did little more than advance slowly along a path upon which institutions located in the large cities had entered a generation previously. This is true both as to professional work in medicine, which several of them came slowly to sanction,[1] and as to professional work in law, which they continued rigorously to exclude. Such studies of a political character as were introduced were intended only for their own undergraduates. They were designed, as President Stiles put it in his project for a Yale professorship of law in 1777, "not indeed towards educating Lawyers or Barristers, but for forming *Civilians;*"[2] or, in the later words of President Smith of Princeton, written in 1812, to embrace "those principles of jurisprudence, politics and public law or the law of nature and nations with which every man in a free country ought to be acquainted."[3] In the Federalist section of the country there was no thought of following the Jeffersonian lead and building up, alongside the college, a substitute course of professional education in the law leading to its own degree; nor yet of adopting the Columbia compromise, and devising a course for the benefit of both college students and outsiders. The connection between the college and professional training was to be maintained in the traditional English way, by persuading the prospective lawyer to take both. Since, under the strict discipline of the American college, a resident student could not, as in the English universities, be registered as a law student at the same time, the courts were induced to modify their bar admission rules. College study was never positively required. It was accepted, however, in lieu of part of the prescribed period of apprentice study;

[1] Medical professorships were established by Harvard in 1782; Dartmouth, 1798; Brown, 1809; Yale, 1810; University of Vermont, 1811.

[2] Warren, *History of the American Bar*, p. 563.

[3] Colby, J. F., "The Collegiate Study of Law," 19 *Rep. Am. Bar Ass.* (1896) 525.

and sometimes this period was fixed at a length which permitted an entire college course to be substituted without delaying the student's admission into practice.[1]

These political studies, given by "professors academical" as contrasted with "professors medical,"[2] resembled what we should now term government and jurisprudence rather than law, and were still only partially differentiated from ethics and philosophy.[3] In 1789, for instance, Harvard received a bequest to establish the Alford Professorship of Natural Religion, Moral Philosophy and "Civil Polity." Under this latter head was to be included the application of the law of nature to nations and their relative rights and duties, the reciprocal rights and duties of magistrates and of the people, and the various forms of government which have existed or may exist in the world. The principal purpose of the chair was "to demonstrate the existence of a Deity or Final Cause;" its eventual absorption by a highly rationalistic department of philosophy constitutes an interesting application of what

[1] New York retained its old requirement (see above, page 83) of counting college work (phrased after 1797 as "classical studies pursued after the age of fourteen") year for year toward a prescribed period of seven years. Massachusetts, after a period of hesitation and varying local practice, in the course of which Suffolk County required one year more study from graduates of other colleges than in the case of Harvard men, adopted in 1806 a similar rule (time devoted to "literary acquisitions" in addition to a good school education). In weakened form this was later introduced into Maine.

New Jersey, on the other hand, in 1780 gave a total allowance of only one year to college graduates, and before the close of the eighteenth century this example was followed in Rhode Island, Connecticut and South Carolina. New Hampshire, in 1805, with its longer period of preparation, granted an allowance of two years. In 1810 Massachusetts adopted this plan, and in 1826 Vermont — in the latter case with a provision also for partial credit for applicants who had not completed their college course. In 1843 Vermont raised its lump allowance to two and a half years.

As requirements of a prescribed period disappeared, this recognition of college work naturally went with them. In 1880, however, six of the twenty-one states in which a period was prescribed (Vermont, Rhode Island, Connecticut, New York, New Jersey and Oregon) granted such an allowance, and even to-day a year's credit is given in Rhode Island and New York.

[2] Compare Timothy Dwight's description of the state of higher education in New England in 1812, in his *Travels in New England and New York*, 1821-22, IV, 294.

[3] For a valuable succinct summary of the gradual disentanglement of "jurisprudence" in European thought from theology, philosophy, ethics, legislation, international law and politics, see Roscoe Pound in 30 *Harvard Law Review* (1917), 201-203. Broadly speaking, American classification and terminology has followed in these respects the general current of European thought. With respect, however, to the further differentiation of "jurisprudence" and "law," there is much confusion. In popular usage in this country, "jurisprudence" signifies legal study pursued without reference to the immediate needs of a practitioner. See below, page 300, note 1.

lawyers term the *cy pres* doctrine to the intentions of a testator.[1] Whatever was actually taught, however, these studies, when most highly developed, were usually designated as "law;" and in the three cases in which separate chairs were created, the incumbents were practitioners. This was the budding time of the American university curriculum, and while these vague generalities interest us to-day mainly as the origins out of which developed our modern academic departments of government or political science, in the two oldest colleges they also became connected with education for the legal profession.

The successive attempts to broaden the old philosophical, classical and mathematical curriculum of the New England college by increased attention to political studies were as follows:

Yale: President Stiles' projected professorship in 1777 was to comprise lectures on the civil law; on the common and statute law; on the codes of the thirteen states, including as much of Connecticut practice "as is founded in principle and not merely officinal, for this is best learned at the Bar and by living with a Lawyer;" and comparative government, including international law. Failing to secure legislative endowment for this, he delivered occasional evening lectures on "Law and Jurisprudence" himself, and in 1789 introduced Montesquieu into the list of prescribed readings. In 1801 a practitioner and prominent Federalist politician, Elizur Goodrich, was appointed professor of law, but resigned his position in 1810.

Harvard: In 1781 Isaac Royall, a loyalist refugee, died in England, leaving to Harvard a bequest to endow a professorship either of laws or of Physick and Anatomy. This, like the Alford bequest, was allowed to accumulate until the conclusion of peace in 1815. There was some agitation in 1785 and 1786 in favor of establishing a law professorship. Until 1816, however, the only subjects of instruction related in any way to politics were moral and political philosophy and history and antiquities.

Princeton: Montesquieu was introduced into the curriculum a few years earlier than at Yale, and between 1795 and 1812 President Smith lectured upon the subjects mentioned in the text, as a part of his regular course of moral and political philosophy.

Brown: David Howell, a practitioner, was professor of jurisprudence from 1790 till his death in 1824. But although requested by the Corporation to prepare and deliver a course of lectures in 1799, and again in 1815, there is no record that he ever did so.

Dartmouth: In 1796 "natural and political law" was taught to seniors, distinct from "natural and moral philosophy," which

[1] Quincy, Josiah, *History of Harvard University*, 1840, II, 502.

was a junior subject. In 1808 the trustees voted to establish an "academic professorship of law," but the position was not filled until 1822, when the title was changed to professor of American Constitutional Law.

Middlebury: Daniel Chipman was appointed professor of law in 1806, and his brother, Nathaniel Chipman, after his retirement from the chief justiceship of Vermont, in 1816. Although the latter continued to occupy the position until his death in 1843, it is probable that, like Chancellor Kent, his lectures were subordinated to his interest in finishing his *Dissertations.* This work, of which the first sketch was published in 1793, and the completed version forty years later, occupied for a time much the same position among discussions of American government that Kent's *Commentaries* enjoyed among strictly legal treatises.

2. *The Harvard Law School prior to the Advent of Judge Story*

Harvard, which had taken the lead in encouraging medical education in New England, had for many years been singularly inhospitable to political studies. In 1816, however, the Corporation, which had recently passed out of the control of the clergy into that of lawyers, appropriated the income, now amounting to a little over $400, from the old Royall bequest, described in the preceding section, for the support of a Royall Professorship of Law. The Chief Justice of the state, Isaac Parker, was appointed to the position, and was required to deliver, primarily for the benefit of the senior class, a course of not less than fifteen lectures covering the constitution and government of the United States and Massachusetts, the history of Massachusetts jurisprudence, the common law as modified by usage, judicial decisions and statutes, "and, generally, those topics connected with law as a science which will best lead the minds of the students to such inquiries and researches as will qualify them to become useful and distinguished supporters of our free systems of government, as well as able and honorable advocates of the rights of the citizens." The professor was also authorized to admit outsiders on such terms as he might name, provided that regular students were not crowded out.

In its general confusion of aim—its appeal both to prospective lawyers and to citizens, both to college students and to outsiders—this innovation reminds us of Columbia's early experiment with Kent; and the means devised for accomplishing the aims were even more obviously inadequate. No one saw this more clearly than the Chief Justice

himself, who, in his inaugural address as professor, outlined a singularly definite scheme for ingrafting upon this professorship a graduate school of jurisprudence. Four elements in his original idea should be emphasized.[1] It was to be a *professional* school, devoted to the training of lawyers, in the spirit of the still flourishing Litchfield school to which Parker refers with approval; it was not to cater to civilians and lawyers at the same time, in the compromise spirit of Blackstone and Kent. It was to cover only *part* of the professional training of the lawyer, leaving practice to be acquired in the office; although, in language resembling Jefferson's, the inadequacy of office training is set forth, Parker is quite clear that "the practical knowledge of business may always be better learnt in the office of a distinguished counsellor." It was to be a *local* school, tending "greatly to improve the character of the Bar of our State;" the advantage to the Union as a whole of a "national law school" was not yet perceived by Harvard. Finally, it was to be a *graduate* school—"a school for the instruction of resident graduates in jurisprudence" were Parker's own words; the precedent of theology rather than of medicine was to be followed;[2] the college was not to build up a law school competing with itself, but to superimpose one upon a college basis.

The following year, on Parker's initiative, the law school was launched under the direction of Asahel Stearns, a Federalist politician, who as a result of the general wreck of his party after the war had just lost his seat in Congress. Although formally appointed "University Professor of Law," he was to be supported out of the fees of students.[3] The University provided the school only with rooms, with such books as it could afford to buy,[4] and with such coöperation as the Royall Professor could find time for. Only one feature of Parker's original plan was adopted in full. The school was to be a professional school intended

[1] Warren, who well emphasizes the importance of Parker's address, gives extended quotations from it in his *History of the Harvard Law School*, 1908, I, 299–302.

[2] Theological instruction, long on a graduate basis in Harvard, culminated in a fully developed graduate divinity school in 1819.

[3] These were tentatively fixed at $100 per annum, the standard rate for Massachusetts law office privileges at this time (*Annual Reports of the President and Treasurer of Harvard College*, 1871–72, p. 62). The Suffolk County bar, in 1810, had agreed to charge their students $500 for the full three-year term required of college graduates, other periods in proportion. Yale started with $75 per annum. In 1828 Litchfield and the Dedham and Amherst schools charged $100.

Stearns derived his principal support from the position, which he continued to hold, of County Attorney.

[4] $500 granted by the Corporation provided the nucleus for the present magnificent Harvard law library.

primarily for the future practitioner. Harvard had at last taken this decisive step. A curriculum was devised consisting of readings in Blackstone and other common-law texts, supplemented by lectures containing references to American decisions, by a moot court, and by debating clubs. It was only in the dissertations that the student must prepare "upon some title or branch of the law or the history of some department of legal or political science," and in the emphasis laid upon the fact that the public lectures of the college might be attended free of expense, that we can detect any effort to encourage a broad scholarly education as contrasted with a thorough technical training.

The second feature of Parker's design—that the school should provide only a part of the professional training—was also accepted for the time being. A degree was to be given to those who had remained at least eighteen months in the school, "and passed the residue of their novitiate in a manner approved." This, however, was clearly only a working arrangement pending the time when the university hoped to occupy the entire preparatory period. The original statute establishing the school provided that the degree should also be conferred upon students who had remained in the school during their entire prescribed period, and in 1823 the university announced that "the course of study is drawn up with reference to a period of three years." It was only because students would not spend their entire period of preparation here that the university tried to beguile them, by the degree, into spending at least eighteen months. No sequence between resident and office work was insisted upon. The eighteen months' residence might come at the beginning, in the middle, or at the end of the period of three years (or for non-college graduates five years) prescribed by the court. Or it might come after the prescribed period had been completed and the student already admitted to the bar. If a student did not wish a degree, he would still be welcomed. This same announcement significantly added to its statement of a three-year course, "But students are admitted at any period of their novitiate for a term not less than one College quarter."[1] Finally, the remaining two points in Parker's programme—that the school should be definitely keyed to the needs of Massachusetts students, and be open only to college graduates—were discarded at once. Admission was thrown open to applicants from any state, the only condition being that they should be "persons qualified by the rules

[1] *Statement of the Course of Instruction, Terms of Admission, Expenses, &c., at Harvard University*, 1823, p. 15.

of the courts in any of the United States to become Students at Law." This meant that anybody would be admitted.

The reasons for these departures from the Chief Justice's plan are manifest. Harvard inconsiderately embarked upon legal education without counting the cost. This was its period of over-expansion, leading to financial embarrassments and complete reorganization in a few years—the path travelled so often by our American universities. No support could be provided for the law school except that derived from students' fees; therefore as many students as possible must be secured and—for as long a time as they would pay their bills—must be retained. It was a question merely of dollars and cents. Through these manoeuvres, and helped by a puff from Judge Story,[1] the school, starting with five students as against Litchfield's forty-three, had in its third year as many as nineteen students, against Litchfield's eighteen. If Harvard more recently has taken the lead in replacing legal education upon a graduate basis, it is only fair to recall that it was Harvard that gave the signal for encouraging a merely nominal connection between the college and the bar. She lent the prestige of her name to the doctrine that calling a practitioner a university professor is equivalent to making his proprietary law class a university school; and that an academic law degree may properly be conferred upon students entirely destitute of academic training.

3. *The Yale Law School*

Seven years after the opening of the Harvard law school the mantle of Yale also was wrapped around a course of narrow professional training. Although this action was undoubtedly suggested by the Harvard innovation, the immediate origins of the two law schools were quite dissimilar, and resulted temporarily in a somewhat different organization. A private law school had for some time existed in New Haven, as an offshoot of the law firm of Staples and Hitchcock.[2] Staples, removing to New York in 1824, turned over his interest in the firm to his former law preceptor, a prominent Federalist politician, Senator David Daggett.[3] The latter was at once appointed to the now vacant academical

[1] In his review of Hoffman's "Course of Legal Study," *Miscellaneous Writings*, p. 243.

[2] See above, page 133, and Appendix, page 431.

[3] The political affiliations of the early law professors in Harvard and Yale explain, if they do not justify, the insistence later expressed by Jefferson (see above, page 119) that the University of Virginia professors of law and government should be men who could be trusted to inculcate orthodox Republican doctrines in their students.

professorship of law, and the names of his thirteen pupils were included in the catalogue list of Yale students. Two years later the catalogue formally announced "The Law School" as such. With Daggett now transferred to the Connecticut Supreme Court, and on the road to the chief justiceship, the similarity between his position at Yale and that of Isaac Parker at Harvard was pronounced. In both cases a distinguished judge gave to the university such portions of his time as he could afford, lecturing both to seniors in the college and to professional students in the school.[1] In both cases the general supervision and principal conduct of the law school devolved upon a younger practitioner. There remained, however, one essential difference. Harvard's surrender of its academic ideals consisted in attaching to itself a presumably worthy practitioner, and authorizing him to build up a school as best he might; Yale's surrender consisted in attaching to itself a ready-made institution. This initial difference in origin naturally led to certain differences in organization and curriculum. Hitchcock was not at first recognized as a professor. He was a mere instructor, and not until 1830 did his name even appear on the formal catalogue list. Moreover, there was never any suggestion that the Yale school should offer only such portion of legal training as a university may appropriately conduct. It was a full practitioners' course requiring two years for its completion, and including from the beginning practice in drafting written instruments and doing "the most important duties of an attorney's clerk."[2]

Thus, in spite of its nominal connection with the college, the Yale law school continued to be of the already established practitioner type. It resembled, among contemporary New England schools, a private school started in 1823 at Northampton, Massachusetts, by a Litchfield graduate, Judge Samuel Howe,[3] more than it did the Harvard experiment, which at least professed to do scholarly work. An avowedly alien element was admitted into the academic group, though not on equal terms. No degree was granted by the university for work done in the law school. None was needed in order to ensure a fair attendance, according to the

[1] The similarity between the Royall Professorship at Harvard and the older Yale professorship was accentuated in 1833 when, through the activity of friends of Chancellor Kent, an endowment was secured for Daggett's chair, and the title of "Kent Professor of Law" was attached to the position. In both universities the attempt to combine instruction of college seniors with that of professional students was soon abandoned. The professorships, though originating in the college, became completely absorbed by the virtually independent law schools.

[2] Yale *Catalogue*, 1826.

[3] See Appendix, page 431.

modest standards of the day. In 1827 and in 1828 Yale had twenty law students. This was already slightly in excess of the Litchfield figures, and only slightly below those of Transylvania and of the new University of Virginia school. Meanwhile the more pretentious Harvard project, partly because of growing competition, partly because of general demoralization in the university, had failed to attract students. An attendance of a dozen or less was all that Stearns was able to show his unsympathetic superiors after 1819. An academic law degree was not of enough practical importance to the future practitioner to repay the expense and inconvenience of attending a school located in a country village.[1]

4. *Reorganization of the Harvard Law School under Story*

The single event that turned the current of legal education in Harvard, New England and the nation at large was the generosity of Nathan Dane. Author of an *Abridgment of American Law* designed on the general plan of Viner's English *Abridgment*, he conceived the idea of doing for Harvard what the Vinerian Professorship, made illustrious by Blackstone, had done for Oxford. He offered to the incoming president, Josiah Quincy, $10,000 (increased to $15,000 after the success of the school was assured) to establish a professorship bearing his name. One of the conditions of the gift was that the first incumbent should be the distinguished Judge Story. This was made the occasion for a complete reorganization of the school. The circumstance that Story had recently become a member of the Harvard Corporation made it a simple matter unceremoniously to oust Parker and Stearns. Story took Parker's place as the dignitary who gave to the school such time as he could afford; and, taking a leaf from Yale, the Corporation entrusted the onerous routine work to a practical law school man, John Hooker Ashmun, who had already learned his business in Judge Howe's school at Northampton.[2] A small group of students whom he brought with him, together with a single survivor from the Stearns régime, provided the nucleus

[1] No comprehensive history of the Yale law school has been written. See, in addition to the university catalogues, Theodore D. Woolsey's *Historical Discourse pronounced before the Alumni of the Law Department*, 1874; Francis Wayland's "Law Department," in W. L. Kingsley's *Yale College, a Sketch of its History*, 1879, pp. 90–99; Leonard M. Daggett's "The Yale Law School, 1 *Green Bag* (1889), 239; "Yale in its Relation to Law," *Yale Law Journal*, 1901; and Henry Wade Rogers' "Historical Statement," in *Yale Shingle*, 1911. Staples and Hitchcock's original account-books are preserved in the Yale library.

[2] See preceding page.

for a total attendance of twenty-four during this first year (1829–30). Helped not merely by the reputation of Judge Story but also by the wise financial policy of the university, inaugurated at this time and ever since then consistently pursued,[1] the attendance mounted quickly, permanently passing that of Yale in 1835, and of Transylvania and of the University of Virginia in 1838. The following year it exceeded the Harvard medical school figures for the first time.[2] In 1841, its attendance of 115 was greater than that of the medical and divinity schools combined. In 1844, just before the death of Judge Story, it reached the figure, enormous for those days, of 163. Judged merely by the standard of numbers, the school was certainly successful.[3]

Whether this early Harvard school, turning out large numbers of young men into the profession and serving, because of its success, as a model to colleges in other states, exercised an equally beneficial influence upon legal education is a question more difficult to answer. Taking the brighter side of the picture first, it is important to note Dane's original and primary purpose. This was the development not so much of lawyers as of law. With the work of Blackstone and Kent in his mind, he expressly stipulated that Story should be allowed time to publish as well as to teach.[4] And he made another proviso, suggested both by the character of his personal labors and by his opposition, as an old school Federalist, to the doctrine of states rights then being agitated by Calhoun. Story was to confine himself to law "equally in force in all branches of our Federal Republic," supplemented, if deemed advisable, by "state law useful in more states than one, law clearly distinguished from that state law which is in force, and of use, in a single state only."[5] This is the origin of the Harvard tradition of scholarly publication as one of the main objects of its school, and of the

[1] See pages 149–150, below.

[2] Law school 86, medical school 85.

[3] For figures showing the effect of competition among schools that appealed to more than a single constituency, prior to 1840, see Appendix, page 450. The difficulties in the way of securing reliable attendance figures are there discussed. The 1844–45 figures quoted in the text are taken from the college first-term catalogue showing the greatest number of law students. Other editions of the same catalogue show 154 and 156 students.

[4] Referring to Story's projected lectures, he says, in his formal offer to the Corporation: "Clearly, their great benefit will be in publishing them . . . time shall be allowed him to complete . . . a course of lectures . . . probably making four or more octavo volumes." Warren, *History of the Harvard Law School*, I, 420.

[5] *Ibid.*, 419.

"national law" as opposed to the "law of the jurisdiction" as the main object of its study.

Seldom, perhaps, have the intentions of a benefactor been carried out with greater fidelity, and with more conspicuous success, in the development of a great institution of learning. Story's famous series of treatises on selected branches of the law, published between 1832 and 1845,[1] constituted the first, but by no means the last, direct contribution of the Harvard law school to legal scholarship in the United States. And the value to the community of a "national law school," as an influence counteracting the disintegrating tendencies of our forty-eight distinct law-making machines, is more and more clearly realized by Harvard to-day as one of its special merits.[2] Few will gainsay that in these two respects the "Dane Law School," as for a time it was currently known, has proved a worthy monument to its founder.

It is not so clear that the school authorities, in the face of the undeniably difficult situation created by the general lowering of requirements for admission to the bar,[3] did everything that they might have done in the way of training actual practitioners. There was in the first place the question of admission requirements. A college education may properly be required by a university of its own law students, as a portion of a completely rounded education for the higher ranks of the bar, even if it may not properly be demanded by a democratic state as a qualification for the entire profession. Such was the English tradition, and such would seem to be the logical position for a college that is sure of its own worth. This was not the conception of university education held

[1] *Commentaries on the Law of Bailments*, 1832; *Commentaries on the Constitution of the United States*, 1833; *Commentaries on the Conflict of Laws*, 1834; *Commentaries on Equity Jurisprudence*, 1835–36; *Equity Pleadings*, 1838; *Law of Agency*, 1839; *Law of Partnership*, 1841; *Law of Bills of Exchange*, 1843; *Law of Promissory Notes*, 1845.

[2] The earliest official announcement of the school's policy toward local law appears in the catalogue of 1841, in the following statement: "No public instruction is given in the local or peculiar municipal jurisprudence of any particular state; but the students are assisted by the Professors, as occasion may require, in their private study of the law and practice peculiar to their own state." In 1848 this was changed to read: "The design of this Institution is to offer a complete course of legal education for gentlemen intended for the Bar in any of the United States, except in matters of mere local law and practice."

The suggestion, often made, that the real reason for Harvard's consistent belittling of local law is that it has to adapt its instruction to students from many jurisdictions, hardly goes to the merits of the question. The essential point is whether the community gains through the existence of a school the character of whose clientèle encourages the maintenance of this policy.

[3] See above, pages 85–90.

by Jefferson, who was constitutionally opposed to requirements of any sort. But Harvard, although just beginning through George Ticknor to be influenced by Jefferson's liberalizing views, was far from accepting his radical reconstruction of the whole scheme of higher education. Even in the most extreme phase of Eliot's free electives, Harvard has tenaciously clung to her college as the essential kernel of her entire university system. In spite of this fact she went even farther than Jefferson in discouraging law school students from acquiring a liberal education. In the University of Virginia, at least, the "schools" were so correlated that it was easy for the law student to take liberal studies at the same time. But at Harvard, although law students were admitted to the "public lectures" of the college, it was only in Ticknor's modern language courses that actual instruction might be secured, and then only by paying an additional fee. Except for this possibility, the law school was then, as now, maintained as a virtually separate institution. Its students were freed even from the college requirement of residence in Cambridge. Liberal studies must be pursued, if at all, before the law course was begun. And yet the school did not demand any preliminary education in its students. So far from requiring them to be college graduates, it did not even require them to have enough education to be admitted to college. More explicitly even than Stearns, Story announced: "No previous examination is necessary for admission."[1]

[1] The successive steps by which the Harvard law school passed from the principle of admitting only Massachusetts law students, graduates of a college, to the frank admission of anybody, to any part of the course, elementary or advanced, at any time, are worth tracing in detail:

1816. Parker's inaugural address as Royall Professor: "A school for the instruction of resident graduates in jurisprudence may be usefully ingrafted on this professorship . . . [this] will tend greatly to improve the character of the Bar of our State."

1817. Statute establishing law school: "Some Counsellor, learned in the law, shall . . . open and keep a school for the instruction of Graduates of this, or any other University, and of such others as according to the rules of admission as attornies, may be admitted after five years' study in the office of some counsellor."

1817. Announcement of new school in *Boston Daily Advertiser:* "Candidates for admission must be graduates of some college, or qualified by the rules of the courts to become students at law, and of good moral character."

1823. *Statement of Course of Instruction:* "Graduates of any public college, and others qualified by the rules of the Courts in the States to which they belong to become students of Law, and of good moral character, may be admitted to the Law School . . . students are admitted at any period of their novitiate for a term not less than one College quarter."

1825. *Catalogue:* "Persons qualified by the rules of the courts in any of the United States to become students of law, may be received into the Law School, for a period not less than one term."

1829. *Catalogue:* "Constant residence in Cambridge will not be deemed indispen-

That under these circumstances a considerable proportion of Harvard law school students should have continued to be college-bred men[1] is a tribute to the tenacity of the college tradition among applicants for the bar. Certainly Judge Story, in his double capacity of member of the Corporation and head of the law school, was not over-exerting himself to reduce attendance in his department of the university.

In the second place, in its curriculum the school projected more than it actually carried out. Generalities in Story's inaugural address as to Philosophy, Rhetoric, History and Oratory may be ignored. His failure, while professing to believe in the value of such studies for lawyers, to find any place for them in the curriculum of his school is of interest chiefly as destroying a possible defense for his failure to insist upon college study. What he did do in his first curriculum, published in 1830, was to supplement the common-law and equity subjects, already taught by Stearns, by textbooks in Civil Law, International Law, Criminal Law, and Constitutional Law, including in the latter American state constitutions as well as the law of the federal constitution. In 1832, however, all these topics except the last (federal constitutional law) were dropped from the regular two-year course, now outlined as an alternative to the three-year course originally contemplated. Although until 1850 the additional subjects continued to be more or less vaguely offered as extra studies, for students who would consent to stay an additional year,[2] the intensive work of the school was henceforth confined to its original narrow field, supplemented only by study of

sable for the law students; it will be sufficient if they give their attendance at the regular hours prescribed for lectures and examinations and study.

"No previous examination is necessary for admission to the school."

1835. *Catalogue:* "The students are divided into classes, according to their proficiency; but students are generally at liberty to join either class, in as many studies as they may choose, according to their own view of their accomplishments.

"No previous examination is necessary for admission."

1840. *Catalogue:* "No examination nor particular course of previous study is necessary for admission.

"Students may enter the school in any stage of their professional studies."

1842. *Catalogue:* "Students may enter the school in any stage of their professional studies or mercantile pursuits."

1848. *Catalogue:* "Students may enter, if they so desire, in the middle or other part, of a term."

[1] The proportion during the earlier years of the school usually ran from two-thirds to three-quarters. In 1844, however, only 56 per cent of the banner attendance of that year were college graduates, and in 1869 and 1870 only 47 per cent.

[2] "For gentlemen who remain in the Institution three years, other studies are prescribed." *Catalogue*, 1835.

the federal constitution. Not merely state government but also statutory law was eliminated.[1] A valid defense for this action exists. It is the boast of the Harvard law school that it has endeavored to cover part of the broad field of legal education thoroughly, instead of dissipating its energies, like poor David Hoffman, over a hopelessly extensive area. During this period American law was developing, through judicial decisions, very rapidly. Doubtless it seemed a wise policy to start by doing part of the work well, in the hope of being able eventually to take up the excluded topics. Unfortunately this hope has never been realized, even to the present day. The Harvard curriculum, while keeping pace with the growth of American practitioners' law, and therefore vastly more crowded with common-law studies than the practitioners' schools which it replaced, has remained none the less crystallized within the original narrow circle of their aims. It has never so far completed the first portion of its task as to be able to attack the omitted portions. Whether by deliberate choice, or through necessity, or through apathy and neglect, thoroughness rather than breadth has remained Harvard's dominating ideal.[2]

As already intimated, there is much to be said in defense of this policy, both on general grounds and as the only policy possible under existing conditions. Two points, however, are worth noting in this con-

[1] Hence, doubtless, the omission of Criminal Law, which in many states was early placed upon a statutory basis. This topic was not restored to the curriculum until 1848, after Story's death.

See further as to the curriculum, Chapter XXIX, and Appendix, pages 453–456, 458.

[2] Charles Warren's *History of the Harvard Law School, and Early Legal Conditions in America*, 3 vols., 1908, although discursive, is an invaluable guide to the history not only of this but of other early schools. Any one who attempts to study the inchoate beginnings of legal education in this country owes a debt of gratitude to this writer for the mass of information and references that he has assembled. Without this pioneer work, the present study could hardly have been written. Unfortunately, Warren's volumes, like his later abridgment published under the title of *A History of the American Bar*, contain so many errors of detail, that it is unwise to accept any of his statements without verification from the original sources, notably the university catalogues, statutes, etc. The most important document bearing upon the early history of the school, and not quoted by Warren in full, is Story's inaugural address, found in his *Miscellaneous Writings*, 1835, pp. 440 ff. See also *The Harvard Law School, 1817–1917*, published by the Harvard Law School Association, 1917; reprinted with additions under the title of *Centennial History of the Harvard Law School, 1817–1917*, 1918; and, for the later period, Fessenden, F. G., "The Rebirth of the Harvard Law School," 33 *Harvard Law Review* (1920), 493–517; and Eliot, C. W., "Langdell and the Law School," *ibid.*, 518–525.

The Harvard Club of New York City possesses an almost complete collection of catalogues since 1819.

nection. The particular portion of "Ethicks and Politicks,"[1] of "moral, political and juridical science,"[2] on which the Harvard law school has concentrated its energies from the start, was just that portion which the practitioners most wanted. A wise adjustment of educational supply to public and professional demand is of course always in order. But if we recall other features of Harvard's educational policy at this time, it is impossible to avoid the suspicion that here, also, Story was pursuing the line of least resistance. The university was following, not leading, the profession. Furthermore, as regards one highly important feature of the narrowed curriculum—its recognition of the needs only of the practitioner and judge and its apparent ignoring of the service that a university law school might perform in training also legislators—Story's inaugural address reveals what his theory was. He was thoroughly awake to the evils of slipshod legislation. But he was also a strong partisan of the common law during a period when it had not completely established itself as the basis of our jurisprudence. He stretched historical accuracy in his sweeping declaration that our ancestors brought this law with them, as a fully developed body of legal doctrines it would appear, which they deliberately put into operation. He persuaded himself, accordingly, that all that was necessary in order to secure good statutes was to have them drafted by masters of the common law—such as the Harvard law school intended to train. He underestimated how much efficient legislation involves beyond mere knowledge of the common law that it is designed to supplement or replace. As for "government," in the sense of training future citizens in the principles of "the most complicated frame of republican government which was ever offered to the world," he thought that this topic ought to be studied in the elementary schools[3] along with ethics, natural law and theology. These latter studies, he believed, already the future lawyer usually pursued there "with sufficient fulness and accuracy."[4]

Whatever judgment may be passed upon Story's and Harvard's slighting of everything except the general principles of the common law, and American decisions developing this and the Federal Constitution, one thing at least is certain. Under the lead of this most suc-

[1] Page 113.

[2] Page 118.

[3] See "Lectures on the Science of Government, delivered before the American Institute of Instruction," 1834, in his *Miscellaneous Writings*, pp. 147 ff.

[4] So stated in his "Inaugural address," *Miscellaneous Writings*, p. 466.

cessful of American law schools the orthodox province of law school teaching was now defined. Politics and law were no longer to be joined as in Jefferson's two Virginia institutions. Politics, as a subject of university study, was eventually to be developed by the college in its departments of government or political science; the particular function of the law school, from now on, was to cope with the increasing flood of judicial decisions.

Finally, the law degree, for which the completion, in the school or out, of the Massachusetts bar admission period — at this time three years for college graduates, five years for others[1] — was originally required, was cheapened in 1834, and again in 1839. The details of this interesting development will be discussed elsewhere.[2] Suffice it here to note that the figures of attendance quoted represent the students present at the beginning of the academic year. There was a large floating population in the school. Thus, in 1838–39, although the school opened with seventy-eight students, seventy-three additional students entered during the year. Sixty-five, however, left during the year, and the average attendance, as determined by the term bills paid, was less than the number at the beginning. The final reduction in the requirements for the degree to eighteen months residence — or a year for those already admitted to the bar — was clearly calculated to entice additional students into coming, and into staying at the school slightly longer than they otherwise would, after experience had demonstrated that the traffic would not bear a three-year requirement. Three years later Yale, whose attendance had begun to decline, announced for the first time a law degree in connection with her narrow practitioners' course, on terms only slightly more rigorous.[3] The great influence of Harvard upon other schools, for bad as well as for good, was again demonstrated.

From some points of view this record is not inspiring. Educational standards were subordinated to the ambition of building up attendance. More students mean more money and more fame. Fame means still more students and hence more money. It should be borne in mind, however, that Harvard was not only making solid contributions to legal scholarship during these years. In pursuance of its wise policy of devoting all law school receipts to the benefit of the school, the university was also

[1] See above, page 83.

[2] Page 167.

[3] One year for applicants already admitted to the bar; eighteen months for college graduates; the full two-year course for others.

preparing the future of legal education in other ways. Without the stimulated attendance of these early years, the Harvard law library could not have grown in twenty years from under two thousand to ten thousand volumes. Without the accumulated surplus that rolled up, future building operations could not have been conducted. A fair statement of the case would be that the ideal of conducting the best possible school for contemporary lawyers was sacrificed, perhaps justifiably, to the development of American law and to the ultimate strengthening of legal education.

CHAPTER XIV

SPREAD OF A STANDARDIZED TYPE OF LAW SCHOOL

THE leading colleges and universities of the day having finally agreed upon a general policy in regard to legal education, there followed a long period of formal imitation. Virginia and New England — Thomas Jefferson and Harvard — representing though they did opposing influences in American life, had combined to establish the principle that instruction in technical or vocational law should be provided for students who had taken none of the work offered by the traditional Anglo-American college. This decision, following the similar step that had already been taken in connection with medicine, gave us the American university in its original and still prevailing form — the form that it universally bore prior to the introduction of graduate study. Professional schools conducted by and for practitioners were to be loosely coördinated with the original college rather than worked into an integrated educational scheme. Under Harvard influence no premium was placed upon college work as a desirable element in a fully rounded education for the bar. Prospective lawyers might, as always, go through the college before they began their law studies, or they might not. So long as they could be persuaded to enter the university law school on any terms, the university authorities were glad to take them in. Even the state did more to encourage academic training than this. Several states, as we have seen,[1] permitted college graduates to complete their strictly professional training in a shorter period than was normally required. But the colleges' own trustees were strictly neutral in this as in all other respects.[2] If it was desirable that two grades of practitioners should be trained — the liberally educated leaders of the profession and the mere technical craftsmen — and that the university should train both, all such distinctions were ignored in the school itself, which placed students of both types on an identical basis in the classroom. The interests both of the college and of the profession were subordinated to the widespread desire to secure professional students in medicine and in law in order thereby to expand old-fashioned colleges into up-to-date universities.

[1] Page 135, note 1; and compare pages 83, 112 and 313.

[2] For occasional early exceptions, see the following chapter, page 166; and compare page 175.

1. *Additional Schools started prior to the Civil War*

The movement proceeded slowly for a time. South Carolina College, controlled largely by the judges of the state, declined in 1823 to comply with a suggestion of the legislature that it start a law school, until funds should be provided that would permit the school to be placed upon a graduate basis, not dependent upon tuition fees. The result was that not until the college had been converted into a state university, after the Civil War, was a school of the prevailing type established. This was soon closed because of negro control, and was not finally reopened until 1884. Efforts to start a school at the College of New Jersey (Princeton) in 1825 and 1835 came to nothing, nor did the school that was actually opened in 1846 graduate more than six students during its existence of six years. The project of a school, outlined by John C. Spencer for Hamilton College, New York, in 1835,[1] in consequence of a bequest received for this purpose, was not realized until twenty years later, when Theodore W. Dwight, already Professor of Constitutional Law (government), developed a professional law school from which, after three years (1858), he was called to Columbia. Attorney-General Benjamin F. Butler's New York University school, which after some delay was opened in 1838, attracted only fifteen or twenty students, and lasted only a single year. Although Butler's name long continued to adorn the pages of the University catalogue, as Kent's did that of Columbia, the year 1858 marks the real beginning of legal education at both these universities. Judge John Reed's school at Carlisle, Pennsylvania, connected with Dickinson College, and the Cincinnati law school were the only other schools started or adopted by a college prior to 1840.

By 1840, accordingly, instruction in professional law had actually been given in twelve college or university schools, of which only seven were still in existence, with an aggregate attendance of about 350 students;[2] five middle-states experiments had been for the time being abandoned.[3]

[1] See 13 *American Jurist* (April, 1835), 486. Spencer found it necessary to justify the entrance of the college into the field of legal education as follows: "It is believed that law is a science, and may be studied and acquired in the same manner as all other sciences; and consequently that the general system of instruction pursued in our colleges may be successfully applied in this branch of knowledge." It is interesting to compare this language with a quotation from Langdell given by Professor Redlich in his report to the Carnegie Foundation (*Bulletin Number Eight*, p. 15).

[2] William and Mary, Transylvania, University of Virginia, in Virginia and Kentucky; Harvard and Yale in New England; Dickinson in Pennsylvania; Cincinnati in Ohio.

[3] University of Pennsylvania, Columbia, University of Maryland, Columbian College of Washington, D. C. (later George Washington University), New York University.

During the next twenty years the founding of university law departments proceeded more vigorously, at the average rate of nearly one a year. The decade 1840–50 witnessed the first invasion of legal education by the western type of state university,[1] by the Jesuit order[2] and by a municipal university.[3] The development at this time was mainly in the South. The principal events of the decade 1850–60 were the revival of the University of Pennsylvania law department, the establishment of four law schools in the state of New York[4] and the opening of the present law departments of Northwestern University (Chicago) and the University of Michigan. By 1860 a total of thirty college or university law schools had been started since the Revolution, of which eighteen had never closed their doors, and three had been revived after early failure, making a total of twenty-one then in existence.[5]

Although the development of these competing institutions, coupled with Judge Story's death in 1845, seriously reduced the attendance at Harvard for a time,[6] this school preserved its reputation as the leading law school of the country. Thus in 1854 President Lindsley of the Uni-

[1] Indiana University, 1842, followed at once by four southern universities which conformed to this general type (Georgia, North Carolina, Alabama, Louisiana). The older institutions bearing the names of the states of Virginia, Pennsylvania and Maryland, have developed along different lines.

[2] St. Louis University, 1843. This was also the first law school conducted under university auspices west of the Mississippi. After a brief existence of five years the school was abandoned, and was not revived until sixty years later. The earliest permanent Roman Catholic law school was started by the Congregation of the Holy Cross in 1869 at its University of Notre Dame, Indiana.

[3] The University of Louisville, in its origin, like the University of Maryland, essentially an expanded medical school, is governed by a board of trustees who from the beginning have been appointed by the municipality, on the prevailing model of state universities. The mere use of an urban name — Cincinnati, New York, Albany, Nashville, Chicago, Richmond, Boston, etc. — is no guide to the character of an institution.

[4] Albany, 1851; Hamilton, 1855; Columbia and New York University revived, 1858.

[5] Or including the school started by McKendree College in 1860, twenty-two schools at the outbreak of the Civil War. These twenty-one schools are listed in the Appendix, page 451.

For a complete list of schools, arranged chronologically, and a table showing gains and losses by decades, see Appendix, pages 423-430, 444.

[6] In the five years following Story's death the attendance dropped from 163 to 94. Attendance from Massachusetts fell off 37 per cent, from the rest of New England 41 per cent, from southern or border states 47 per cent, from the rest of the country 46 per cent. At the outbreak of the Civil War the attendance had risen again to 166. The per cent increase during the decade, for the same four geographical groups, was 46 per cent, 69 per cent, 81 per cent, 140 per cent. The total attendance was now distributed as follows: Massachusetts, 32 per cent; other New England, 16 per cent; southern and border states, 23 per cent; other United States and foreign, 29 per cent.

versity of Nashville assured his alumni that their own recently established school was furnished with "a suite of rooms, a corps of professors, and a plan of organization which bid fair, at no distant day, to rank it as the Harvard of the South."[1] Lindsley's hopes were disappointed, however. The southern Harvard was closed after a single year. In its place Cumberland University in the same state maintained the position it had early secured as the leading school, in point of numbers, in the Southwest; the year before the Civil War it forged to the front even of Harvard, its catalogue showing 180 students.[2]

2. *General Similarity of these Early Schools*

On the whole these schools were very similar to one another. Potentially important differences existed, as will be shown later, in the length of their degree course, in their organization and in their relation to office study, but for the moment these differences possessed little practical significance. A few other distinctions may be noted, but these also were relatively unimportant, even at the start; and progressively, as the lowering of bar admission standards and improvement in means of communication made the battle for existence more severe, schools competing with one another and with the older law office approximated to a common type. Thus at the beginning Virginia and Harvard sacrificed their colleges in different ways, and in pursuit of different ideals. Jefferson, as we have seen, deliberately planned to abolish the college in favor of his more comprehensive university scheme, under which academic and professional chairs or "Schools" were to be coördinated on equal terms in a free democracy of learning.[3] Harvard, on the other hand, preserved its college organization intact, but set up beside it rival schools of medicine and law.[4] Jefferson's scheme was the more idealistic and symmetrical. Its defect was that it ignored the fundamental distinction between cultural and professional education, and therefore could not be made to work, even badly, as did the Harvard system. The Virginia academic "Schools" continued in fraternal union with one another. The professional "Schools," on the other hand, expanded, through the creation of additional chairs, into professional departments, demanding

[1] *Address delivered before the Alumni Society of the University of Nashville by John Berrien Lindsley, October 3, 1854.*

[2] For relative attendance figures in the schools, see Appendix, page 451.

[3] Page 116. [4] Page 145.

the full time of their students, and standing apart from the rest of the university, which thus again became a virtually independent college in fact, if not in name. This development occurred in medicine as early as 1837; in law in 1851. After this date there was no real distinction between the Virginia and the Harvard type of university.

Similarly, as regards the curriculum of the law department, the Virginia ideal was much broader at the start. "Politics" for legislators as well as law proper for practitioners was in the beginning taught in this state and in the Kentucky school. When, in 1851, the rapid growth of American law threatened to crowd out politics, and statutes, and international law, the University of Virginia appointed a second professor, in order that justice might be done to all these topics. As late as 1854 the University of Mississippi started its department under a professor of "Law and Governmental Science." For the moment this was decidedly in contrast with the Harvard ideal. We have seen how narrow was the practitioners' course originally introduced by Stearns, and how Judge Story's efforts to broaden it culminated merely in the addition of his own important studies in the federal constitution. The field that a professional law school can profitably cultivate was defined, in short, quite differently in New England and in the South. Harvard, though it had a larger teaching force, cultivated a much smaller area. Here again, however, events proved that, with the resources at their command, Harvard was right and Virginia was wrong. The volume of judicial decisions grew faster than did the capacity of the Virginia school to expand its teaching force. The charge of superficiality could be avoided only by dropping some of the subjects. Thus all schools have been forced to devote their main energies to the common law; and while the question of what they do with the rest of their time will eventually become of great interest,[1] the total thus diverted does not bulk large in the final result. "Politics," even in the South, has been relegated almost entirely to the colleges, where it has been developed in departments usually bearing the name of "Political Science" or "Government."[2] In the University of Virginia itself, government courses are now given by the academic School (department) of Economics, though Parliamentary Law, as a direct inheritance from the original William

[1] See below, pages 273 ff.

[2] South Carolina College, which had no law school, possessed between 1835 and 1856 the most eminent political historian and philosopher in the country, in the person of Francis Lieber. His precise title was "Professor of History and Political Economy," to which was added, in 1849, "Political Philosophy."

and Mary curriculum,[1] was offered until recently as a law school elective. Another minor consequence of Jefferson's broad ideals is the tendency, among universities influenced by Virginia, to place such borderland subjects as international law in the law school rather than in the college.[2] But on the whole, with whatever aspirations the schools started, in the end there was no substantial distinction between northern and southern courses of study.

The principal divergencies that can be discerned in the courses of study maintained by early law schools sprang from different causes, which operated intermittently in all parts of the country alike. We have seen[3] that while Harvard determined the general type of university law school that prevailed in the North and ultimately also in the South, there was in the beginning a distinction between the attitude of Harvard and that of Yale toward legal education. This line of division, at first purely subordinate, ended, as the southern schools became assimilated to the northern type, by becoming the principal one. It should be neither over-emphasized nor overlooked. The two New England schools were alike in seeking to train only the practicing lawyer, and not the politician or legislator as well. Where they differed was in their estimate of the kind of training that the practitioner required. Harvard was slow to assume entire responsibility for this task, as a substitute for the system of office training. Its original conception of its mission was to leave to the office what the school cannot do so well. Yale, on the other hand, from the start frankly attempted neither more nor less than an ordinary practitioners' course, annexing to itself what was essentially a systematized law office. Traces of this early conflict of ideals may at all periods of our history be found between school and school, or in the same school at different periods: now a somewhat greater emphasis upon a scholarly treatment of the broader aspects of the common law; now a greater attention to the minutiae of practice, to the drafting of written instruments, to the purely local law of the jurisdiction. Early law schools, however, cannot be satisfactorily classified from this point of view. As the pressure to secure students, and

[1] See above, page 117.

[2] It is significant of the extent to which the divorce between law and government work has been carried in most universities that at Harvard, as the result of a recent attempt on the part of the law school to broaden its curriculum, independent courses in International Law, Roman Law, and the history of English law were in 1916–17 offered both by the law school and by the college Department of Government.

[3] Page 141.

therefore to give students what they demand, has made itself felt under a competitive régime, few schools have pursued a consistent policy in this respect. The variations spring partly from the calibre or temperament of the instructors—the relative importance they attach to thorough grounding in fundamental principles, as against an education that will be of immediate use—and partly from the nature of the clientèle to which the school most naturally appeals—whether to a national or to a local student body. The main significance of the shifting policy and general uncertainty as to precisely what subjects shall be taught is the evidence which this affords that the community demands more than a single type of legal education. In the attempt to be all things to all men, a standardized curriculum has been sought. Failure after all these years to agree as to the content of such a curriculum is a pretty fair indication that the task is impossible.

Everywhere, accordingly, university students and their instructors tended to become divided into independent and more or less competing groups: on the one side, college students who were taught only by the college faculty; on the other side, undergraduate students who were registered only under the professional faculties of law or medicine. The lines of division were sometimes blurred, it is true, because it was not unusual for students to carry academic and law work at the same time. This blurring occurred somewhat differently in the two sections of the country. In the South it was the result of the Jeffersonian tradition, which encouraged college students to elect professional work. Students registering both in the academic and in the law "Schools" appear in the University of Virginia catalogues until a late date. The notion survived even where the northern type of university organization was definitely introduced. Thus the University of North Carolina, when it took over a private law school in 1845, organized a separate law class for the benefit of "such irregular members of the College as, with the permission of the Faculty, may be desirous of joining it."[1] In the North, on the other hand, the rigorously prescribed college curriculum, the more intensive character of the law work, and—in the cities—the physical location of the law school near the courts instead of at the university, operated to exclude college students from the practitioners' classes. Here the pressure to break down artificial barriers was exerted in the opposite direction. The tendency was for law students occasionally to take a little academic work, rather than for college stu-

[1] For the peculiar arrangements as to a degree, see below, page 166.

dents to take law courses. At Harvard, although outside of Ticknor's modern language courses no effective instruction in academic subjects was open to law students, the privilege of attending the "public lectures" of the college faculty was for many years highly prized.[1]

Furthermore, in an effort to counteract the excessive narrowness of the northern curriculum, a partial blending of the college and law school faculties sometimes occurred. During the first period of the Harvard law school, for instance, the Royall Professor continued in theory to be primarily engaged in lecturing to college students. His lectures were merely "open," on the same principle as other public lectures, to Stearns' law students, who by this means secured their contact with non-professional law. It was only with Judge Story's arrival that this chair became technically part of the law school, that the work of its incumbent became avowedly professional law, and that instruction in government for the time being disappeared from the college. A generation later, a somewhat similar development occurred at Columbia. As part of an abortive plan to develop graduate studies in 1857, Francis Lieber[2] was brought from South Carolina to occupy a chair of History and Political Science in the college. Just as the establishment of the Royall professorship at Harvard led at once to the opening of a practitioners' law school, so at Columbia the introduction of Lieber's work in government was followed the next year by Theodore W. Dwight's narrow professional course.[3] Lieber continued to give

[1] In 1847 an attempt to exact fees was abandoned owing to the strong protests made by the law faculty and students. The lectures most frequented by law students at this time were those in anatomy and history. Already, however, conflicts of hours lessened the value of the theoretical privilege. Although the privilege still survives, the increasing pressure of work upon the Harvard law students makes it to-day of little practical importance. As to the early situation see Warren, *History of the Harvard Law School*, II, 343.

[2] Page 155.

[3] The reader who is interested in the precise genetics of the modern law school will recall that Parker's Royall professorship itself was virtually identical with Kent's unsuccessful attempt at Columbia, which again followed the slightly more ambitious plan conceived by the College of Philadelphia. Both Kent and Parker offered only a single year's work in non-professional law, not leading to a degree, but the work differed from that of the ordinary "academical" professor of law, in being open to other than college students. Lieber, on the other hand, and our modern college departments or schools of government, political science, etc., stand in direct line of succession from the professor academical, untouched by what we should to-day term "university extension" and "vocational" ideals.

William H. Betts, a trustee of Columbia, made a brief attempt, after the death of Chancellor Kent, to deliver law lectures personally, and later led the movement which resulted in bringing Lieber to the college.

undergraduate instruction in the college, and since Dwight's students could not conveniently leave their downtown location to attend his classes, it was arranged in 1860 that he should go down to give a special course in public law to them. Five years later, the college connection was broken, and Lieber, like the Royall Professor at Harvard, became attached exclusively to the law school. Instead of working into the technical curriculum, however, Lieber continued until his death in 1872 to give lectures in his own non-professional field—optional, and rarely attended by more than four students.[1] The ultimate results of the tradition thus started at Columbia have proved to be of some importance. It is obvious, however, that so far as their immediate influence upon legal education was concerned, none of these devices bridged in any satisfactory way the widening gap between the academic college and the professional school. Northern and southern schools became surprisingly alike in this as in all other respects, considering how different were their origins.[2]

[1] The college professor of Moral and Intellectual Philosophy and Literature also traveled down to the law school to lecture on legal ethics, until he became discouraged by his failure to attract students, and stopped trying.

[2] For authorities consulted in the preparation of this and succeeding chapters, see Appendix, pages 460–462.

CHAPTER XV

ESTABLISHMENT OF THE LAW DEGREE

THE assumption of responsibility for instruction in professional law by the colleges or universities naturally suggested the establishment of a scholastic degree appropriate to their law graduates. The problem of devising such a degree, and of defining the conditions under which it should be awarded, presented peculiar difficulties which have never been completely surmounted. Even to-day, law degrees possess far less popular or professional significance, and therefore far less practical importance, than do corresponding symbols of educational attainments in other fields. They have, however, a real even though a subordinate value, and cannot by any means be ignored. In order to clarify the problem, it will be necessary to say a few words in regard to American scholastic degrees in general. These may be conveniently classified under three heads: the "academic" or non-professional degree of bachelor of arts, science or philosophy; higher non-professional degrees; and degrees conferred by colleges or universities in special professional fields such as medicine, law or engineering.

1. *The Bachelor of Arts (A.B. or B.A.) and its Derivatives*

The degree of bachelor of arts dates from the old University of Paris, founded in the twelfth century, and the ultimate source of virtually all higher education both in Europe and America. This degree was implanted at once at Oxford and Cambridge, and subsequently in the American colonial college. Owing to its decadence on the European Continent, it had acquired by the time of the Revolution a characteristically English flavor, for which reason, among others, it was abolished by Jefferson in Virginia. It was reinstated, however, by William and Mary as early as 1792, and by the University of Virginia in 1848, since when it has been universally conferred in this country as a first, and for the great majority of students as the last, non-professional university degree. In popular understanding the receipt of this degree is equivalent to "graduation from a college." At Paris in the thirteenth century three or four years were required for the degree, and in the United States in the twentieth century the requirement is the same. More precisely, the standard residential period is now four "academic"

years, but study during the summers or—so notably at Harvard—more intensive study during the academic year, sometimes enables a student to fulfill all requirements in three calendar years. The broadening of the old-fashioned classical curriculum has not usually been accompanied by any corresponding alteration in the degree. Some institutions, howver, have restricted the arts degree to such graduates as have taken a certain amount of classics prior to or during their college course. For the benefit of non-classical students these institutions originated the degrees of bachelor of science (S.B. or B.S.), bachelor of letters (B.L) or bachelor of philosophy (Ph. B.). A still later development by which professional work may be counted toward the non-professional bachelor's degree will be described in a later chapter.[1]

2. *Higher Non-professional Degrees*

In its original design the baccalaureate was thought of as only a stage in the progress toward the master's degree in arts. When, with the growth of knowledge and the development of lower schools, separately organized but feeding into the universities, the burden upon the student's time threatened to become unreasonably severe, the situation was met in two different ways on the European Continent and in England. On the Continent, the bachelor's course either was gradually taken over by the lower schools or else disappeared entirely from the educational scheme, leaving only a single non-professional degree conferred by the university. Gradually also, as the craft-guild origins of the universities became obscured, the recipient of this degree ceased to be thought of as one who, after a period of apprenticeship, had been finally admitted as a master workman in his craft. The general term "master," applicable to goldsmiths and to scholars alike, gave way to one that more specifically connoted erudition: "doctor" (teacher). England, on the other hand, with characteristic conservatism, retained both the bachelor's and the master's degrees in her universities, but allowed the latter to wither away into an empty form. In order to secure the higher degree, it was sufficient at one time to pay additional fees after the lapse of a certain number of years. In this country we inherited, along with the vigorous baccalaureate, this moribund master's degree (A.M. or M.A.). Efforts to revitalize it, notably in the University of Virginia after the death of Jefferson, were eventually complicated by our adoption of a

[1] See pages 333–338.

totally different educational scheme. When the time was ripe to start serious postgraduate work, young men trained in German universities were placed in charge of "graduate schools," organized, like the already existing professional schools, independently of the college, and leading to the avowedly German degree of "doctor of philosophy" (Ph.D.). Since then the master's degree may be regarded either as an addendum to the bachelor's degree or as a preliminary to the doctorate, and is often conferred on terms that render it of little significance.[1]

3. *Professional Degrees other than in Law*

Among specialized professional degrees,[2] the historic "doctor of medicine" is the only one that has thoroughly established itself in popular repute. An earlier preliminary degree of bachelor of medicine (B.M.) soon disappeared, leaving the title of doctor and the letters M.D. in complete possession of the medical field. Independent medical schools, as early as 1807, secured permission in their charters to grant this degree, antedating by many years a similar development in law. The degree has become the veritable trademark of the physician, and must be counted as one of the influences which has kept this profession in close and prevailingly helpful contact with its schools. It is the focal point of all efforts to improve medical standards, for the reason that, irrespective of state rules affecting admission to practice, the average patient does not wish to be treated by any but a regular M.D. If the profession can establish minimum standards for this degree, either by instigating state regulation, or through its own unaided influence exerted through its national association with its powerful organ of publicity, it has done all that, from the point of view of education, needs to be done.[3] No other profession is in this happy situation, and no other pro-

[1] Yale now confers the degree of Master of Arts "*ex officio* and without public presentation, upon any person who is elected a member of the Corporation or attains professorial rank in the University, and has not already received its Master's or Doctor's degree."

In some institutions the special master's degrees of M.S. or M.L., corresponding to B.S. or B.L., are likewise conferred.

[2] As distinguished from degrees possessing professional value for teachers, but primarily denoting admission into a general fellowship of scholars. The Ph.D. and the A.M. are professional degrees to-day only in the sense that all academic degrees were so originally.

[3] Whether the regular physicians ought to go farther than this, and put upon the statute-books legislation granting its own members a monopoly of medical practice, is a question of governmental policy as to which there may be two views. Even those who believe, however, that a patient should be allowed to be treated by any one he

fession accordingly has such remarkable educational achievements to its credit. In theology the multiplicity of sects, and the difficulty of securing laborers in the vineyard on any terms, make it difficult to impose rigorous educational tests. If individual theological schools or seminaries maintain serious degree courses of varying kinds, they do so without much popular support. The use in ordinary language of such titles as Reverend or Father indicates how much greater weight is attached in this vocation to spiritual than to intellectual attainments. As for recently specialized professions—engineering, teaching, etc.—which have come under the university wing, a bewildering variety of degrees have been devised, which may be compendiously dismissed as amounting to nothing at all. A certificate of graduation in a certain specified course from a certain university or independent technical school receives such credit with the profession or with state licensing boards as the reputation of the institution seems to deserve. To go farther and authorize the holders of these certificates to append cryptic combinations of letters to their names is one of the developments that has helped to make American university degrees an object of derision to foreigners.[1]

The relative success of the American university in establishing its non-professional degrees of A.B. and Ph. D., and its professional degree of M.D., on a basis that seems likely to endure, may be ascribed to the fact that in these branches of university activity European precedents applicable to local conditions could be found. Fortified by these precedents, these degrees have exercised over the popular mind that authority that comes from close adherence to long established forms; nor can it fairly be said that conservatism in this respect has prevented a healthy development in more essential matters. The introduction of the German Ph.D. was indeed a radical innovation, in so far as it represented a departure from the English tradition. It was not, however, a departure from tradition as such. It was merely a shift to what, at that time, was

may prefer, must recognize that it is an advantage to know what the regular M.D. stands for.

[1] The U. S. Commissioner of Education reported, in 1914, 60 different kinds of degrees, conferred in course, not counting those in divinity, law and medicine. Included in the list are such interesting combinations as B.A. in Ed., B.S. in Ed., B.Ed., B.Ped., B.E.E., B.O., B.Journ., B.Mus., B.Paint., B.S. in H.Ec., M.F., M.M.E.

The following are some of the so-called degrees which appear in earlier reports: A.C., A.L.B., B.Did., B.E.M., B.F.A., B.L.S., D.P.H., L.A., L.I., M.E.L., M.S.A., M.Dip. In 1910 the Carnegie Foundation found 38 different degrees conferred in engineering alone (6 *Annual Report*, 1911, p. 86).

See also 18 *Association of American Universities, Journal of Proceedings and Addresses* (1916), 70–72.

believed to be a worthier model. Hence, although this degree is still a trifle exotic and has not like the A.B. and the M.D. become part of the vocabulary of all classes of citizens, it has been able, on the whole, to hold its own.

In the newer professions, on the other hand, we had no precedents to lean upon, and have discovered that authoritative traditions cannot easily be improvised. A public, with a sense of humor, declines to take seriously our poly-literal innovations. It is too soon to determine whether public recognition can in time be secured for some of these—whether out of the existing competition of alphabetical monstrosities a few fit ones may perhaps survive; or whether the whole theory of academic degrees is inapplicable to our now widely diversified system of vocational training.

4. *Early Experiments with Law Degrees*

In the ancient profession of the law, the difficulty was of another sort. It lay not in the absence but in the inapplicability of English precedents. Two types of law degrees were familiar in English usage: scholastic or academic, and non-scholastic or professional. The scholastic degrees were those of Oxford (B.C.L. and D.C.L), and of Cambridge (LL.B. and LL.D.). These represented, however, the usual cultural work, with the addition of a strong tincture of Roman law. Despite Blackstone's efforts at Oxford and the later establishment at Cambridge of the Downing Professorship of the Laws of England, these degrees had little to do with the common law of the practitioners. This was represented by the professional degrees of barrister and serjeant-at-law, conferred by a pseudo-university, the Inns of Court, and admitting their recipients to practice.[1] In other words, the precedents, although familiar, did not apply to the case of an American college undertaking instruction, purely in American law, which led up to but not into the office or position of attorney. Nowhere did the college have authority, like the English Inns, to grant admission to practice through its degree. Moreover, in the northern states still another complication existed. The insistence by the county bars and by the courts upon a prescribed period of preparation for the position of attorney, and the promotion of these attorneys, after a further period of practice, to the higher ranks of the profession, made the process of admission

[1] The expression "degree of counsellor at law" appears in a New York Supreme Court rule of 1797.

even as attorney-at-law virtually equivalent to the conferring, by the courts, of a first professional degree. The system of non-scholastic degrees threatened to be so elaborated, in short, in the hands of the practitioners and the state as to leave no opening for the universities.

This explains why the American college, when it invaded the field of legal education, was forced for many years to pursue a timid policy. It was deprived of what, in medicine, was its chief weapon of defense— the right to grant or withhold a generally recognized, a respected and coveted, degree. Possessing neither legal nor moral control of education for the bar, it could build up a student body only by making its work appeal to the students themselves. It must establish a reputation for being able to give students a more effective preparation for the bar examinations than they could secure from a single practitioner or an independent law school during the same number of years. Any degrees that it might confer would be of subordinate importance at best. Whatever requirements it might institute for such degrees must not interfere with the primary object of meeting the existing demands of the profession.

Under these circumstances, some colleges for a time offered their law work without making any provision for conferring a degree. This was the policy pursued by the University of Pennsylvania[1] and by Columbia in their early unsuccessful experiments, by Yale prior to 1843, and by the University of Georgia prior to 1859. The University of Maryland under its charter possessed the right of conferring the degree of doctor of laws (LL.D.) for attendance at law lectures. There is no record, however, of any such degrees in course actually awarded during Hoffman's ill-fated experiment. The University of Edinburgh tradition affected this institution through the medical school; at Edinburgh, and at all American universities in general, the LL.D. has been purely honorary.[2]

In a few cases the requirements instituted for the new law degree attempted to distinguish between students who took only the ordinary practitioners' course and those who possessed certain academic attainments as well. The early Virginia method of promoting academic study

[1] In 1789 the trustees of the College of Philadelphia voted to consider, in connection with the proposed lectureship, the propriety of conferring degrees in law. Wilson's course was launched, however, without any such provision.

[2] As distinguished from the Cambridge University LL.D., which is granted both for work in course and *honoris causa*. See Grant, Alexander, *Story of the University of Edinburgh*, I, 238, 290; II, 129.

The precise degree conferred by Harvard upon George Washington, in 1776, was "Doctor of Laws, the Law of Nature and Nations, and the Civil Law."

among law students was to make a distinction in the nature of the degree conferred. All students took the same amount of professional work, but those who lacked academic qualifications would receive no degree, or only an inferior one, while students possessing these qualifications would receive a degree indicating this fact. This was the plan adopted by William and Mary in 1792,[1] and, although the language is confusing, was perhaps the intention of a peculiar arrangement devised by the University of Virginia in 1829.[2] Later, when the principle of entirely distinct degrees for college graduates and for law school graduates had definitely triumphed — students to secure both degrees by completing both independent courses of instruction if they chose — occasional attempts were made to stimulate academic study among law students by allowing such work to count as an offset to the normal professional load. Thus, Yale in 1843, following the precedent set in the requirements for admission to the bar, conferred its law degree upon college graduates after eighteen months study, in place of the two years required of others. The University of North Carolina, in 1845, offered the degree under two alternative plans: the completion of a two-year course, composed entirely of professional work; or the completion of a two-and-a-half-year course, of which only a small part was professional.[3] The Yale requirement became a mere anachronism which was

[1] "For the degree of Batchelor of Law, the Student must have the requisites for Batchelor of Arts; he must moreover be well acquainted with civil History, both Ancient and Modern, and particularly with municipal Law and Police." Statutes of 1792.

This was substantially the English system. The use of the singular, "Batchelor of Law" (L.B. or B.L.), in place of the Cambridge LL.B. was doubtless intended to denote the absence of the Civil Law from the curriculum. A similar Scotch degree was not instituted until 1874. Grant, Alexander, *Story of the University of Edinburgh*, II, 130.

By 1837 the academic qualifications had been reduced to "one full course of study other than that of Law, taught in this college." *Laws and Regulations*, p. 26.

[2] "In the Department of Law two degrees shall be established, an academic and a professional, the professor of the school and the faculty being the judges of the kind of proficiency suited to each. The academic graduate shall have the title of Graduate of the School of Law, and it shall be expressly stated in the diploma that the proficiency required for this degree is not such as would entitle him to practice the profession. The professional graduate shall have the title of Barrister of Law." Faculty resolution, 1829.

Two students received the lower degree in 1829, none the higher. The requirement was never published in the annual catalogues, and in 1840, according to a sketch published by Professor Minor in 1859, the degree of "Bachelor of Law" was introduced. At present the usual LL.B. is conferred.

[3] "A complete course will occupy two years for the Independent Class and two years and a half for the College Class, at the end of which the degree of Bachelor of Law

abolished in 1882. The North Carolina device failed to produce the desired effect at the time, since few students stayed long enough in the school to secure the degree under either plan. It is of interest only in connection with much later developments.[1]

Prevailingly, and especially under the influence of Harvard, the problem was approached from a different angle. The original Harvard theory may be expressed as follows: The state had already defined the period of study required for admission to the bar, and with due appreciation of the value attaching to academic work. The period required for admission to the lowest grade was five years in general, or three years in the case of college graduates.[2] The proper policy for the school was to subordinate itself to the state policy in these respects, rather than to set up a rival system of its own. The period prescribed by the state was accordingly the foundation upon which Harvard built. If law students had satisfied this requirement in its entirety, and if they had spent in the university law school such portion of this period as the school was prepared to cover, then such students deserved a university law degree. The Cambridge, England, degree of LL.B. was selected as the appropriate symbol with which to designate those who had thus pursued a portion of their technical studies under academic shades; and eighteen months was considered for the moment to be a long enough portion.[3]

Now, the difficulty with this arrangement was that its foundation was crumbling. The rigorous apprenticeship system was already weakened in other states, and was to disappear in 1836 in Massachusetts itself. In 1834, the attempt to impose Massachusetts standards upon the bar of the country at large was abandoned; henceforth, in addition to the eighteen months residence, students were required merely to have studied "the residue of the time necessary for their admission to the Bar of the State to which they belong or in which they intend to prac-

will be conferred on such students as by their proficiency may be deemed to be entitled to it.

"The Independent Class will be called on for recitations three times a week. The recitations of the College Class will be only once a week, and will be so arranged as not to interfere with the ordinary studies of College." *Catalogue*, 1845–46.

[1] See page 324. [2] See page 83.

[3] "As an excitement to diligence and good conduct, a degree of Bachelor of Laws shall be instituted at the University, to be conferred on such students as shall have remained at least eighteen months at the University School, and passed the residue of their noviciate in the office of some counsellor of the Supreme Judicial Court of the Commonwealth, or who shall have remained three years in the School, or, if not a Graduate of any College, five years, provided the Professor having charge of the same shall continue to be a practitioner in the Supreme Judicial Court." Statute of 1817.

tice." And in 1839, this indefinite "residue" disappeared altogether from the degree requirements, and only the eighteen months remained. What had been originally intended as merely the university's particular portion of the period of preparation was now the only part of the period that was left, a pitiful relic of an originally ambitious structure. Indeed, the theory of correlating law school with state requirements, instead of encouraging students to remain in the school as long as possible, operated now as a positive deterrent. It was thought necessary to provide that students already admitted to the bar might secure the degree after only one year's residence.[1]

Worse was to come, however. In 1847, avowedly for the purpose of enticing students away from the Yale school,[2] Harvard offered to give full credit toward its degree for time spent in any institution having power to confer the LL.B., subject to the proviso that at least one year must be spent at Harvard. This is the origin of the "advanced standing" privilege almost universal in our law schools to-day, the abuse of which has done much to demoralize legal education.[3] The suggestion sometimes made, that it is inherently advantageous for American law students to travel from one school to another, on the model of German university students, is not worth a moment's consideration. Each of our schools organizes in its own way its sequence of small courses and the relative weight attached thereto; it is a sheer loss to the student to be obliged to fit two fragmentary curricula together, even when he is acting in good faith. Notoriously, moreover, the bulk of advanced standing students are the "lame ducks," who hope to slide through the more difficult courses in the general confusion that results. Unless proper precautions are taken, the professional college athlete is helped to ply his trade by this privilege. That some credit may properly be given by one school for work done in another, may be conceded. That even full credit should be given by one school, for time spent in another institution of equal or superior standing, may be allowed. It is a logical absurdity, however, to plead that it is good for the student to be rescued from an inferior school—and then to credit work done there at its face value,

[1] This latter provision was copied by Yale in 1843 and by Princeton in 1846. After 1843 Harvard limited the privilege to those who had studied law for one year prior to admission to the bar.

[2] See Warren, *History of the Harvard Law School*, II, 345, for correspondence leading up to the adoption of the new Harvard statute.

[3] The many technical varieties of advanced standing rules now in force will be discussed in a subsequent bulletin. The University of Virginia law department stands alone in not allowing any credit for studies pursued elsewhere.

as some schools still do. And if logical considerations are not to interfere with the attempt to stamp out inferior schools, one wonders at the code of professional ethics which makes it right to steal clients from one's rivals.

5. *The First Degree in Law as Finally Developed*

By about 1840, the period of experimentation traced in the preceding section came to an end. The influence of the already famous Harvard law school upon other institutions was so great that, from now on, the general principles of the American university law degree were definitely established in the form that they were to retain during the remainder of the century. Subject to occasional unimportant exceptions in individual universities these principles have been shown to be as follows:

1. The degree of bachelor of laws (LL.B.), or occasionally in the South bachelor of law (L.B. or B.L.), instead of being, as in England, a variant of the bachelor of arts denoting that the recipient is a university graduate who has specialized in law, is awarded quite independently of the degree of bachelor of arts. Students who have graduated both from the college and from the law school are distinguished from graduates of either department alone by the fact that they have two university degrees to their credit.

2. The course of study pursued for the degree is almost unrelievedly technical or professional. It professes to do little more than to cover, more effectively, part or all of the ground traversed by office students in preparation for practice.

3. The requirements for the degree are determined, however, by the school itself, independently of the requirements made by any state for admission to its bar.

4. Part, but not all, of the course of study must be pursued in the institution that confers the degree.

The number of years required for this first degree, and the institution in this connection, after the Civil War, of higher degrees in law, will be discussed in the following chapter.[1]

[1] See, as to the power secured by independent law schools to confer degrees, after the Civil War, pages 189–192; and as to the later combined degree in Arts-Law awarded by the universities, pages 333–338.

The replacement, by certain institutions, of the LL.B. by the novel J.D., as a first law degree for college graduates, is a still more modern development, the details of which can be most conveniently given in a forthcoming bulletin of the Foundation, devoted to a survey of contemporary legal education.

CHAPTER XVI

LENGTH OF THE DEGREE COURSE. FAILURE OF HIGHER DEGREES IN LAW

THE classification of law schools as "one-year," "two-year," and "three-year" schools, on the basis of the number of academic years customarily required to secure the degree, early imposed itself as a convenient method of applying quantitative measurements to institutional education. Though a natural inheritance of the traditional method of measuring apprenticeship preparation, it is a very crude and unsatisfactory manner of distinguishing between schools. Granting that the amount of time the student devotes to securing his education deserves consideration as one of several important factors that affect the value of a law school degree, the mere length of the technical course he pursues after having been admitted into the school is only one of three elements that enter into this computation. The other two are the amount of preliminary education that he is required to possess before he may be admitted, and the amount of time that he devotes to his studies during the required residential period. Furthermore, even the length of this period, it will be shown, can be measured only in a very rough and ready way. Some respect must be paid, however, to conventional modes of thought. The following sections discuss, accordingly, the length of the technical degree course up to the date (1890) after which insistence upon this single feature becomes hopelessly misleading.

1. *Length of the Degree Course in Academic Years*

The standard of the early southern schools, William and Mary and Transylvania, was a single year, and is partly to be explained by Jefferson's antipathy to prescribed periods of time, whether in connection with admission to the bar or with institutional education. Litchfield seems ultimately to have required about a year and a half from students taking the entire course.[1] This may have influenced Harvard's early degree requirement[2] of three years for college graduates or five years for others, of which, however, only a year and a half need be taken in the school. By 1830 there had been added the two-year schools of Yale

[1] See page 131.
[2] Page 167.

and the University of Maryland, and the one-year school of the University of Virginia. By 1840 Hoffman's University of Maryland school had expired, and the inflated and impracticable Harvard scheme had been reduced to the solid kernel it contained. A year and a half here, and two years (except for college graduates) at Yale, were now the only exceptions, so far as known, to the one-year standard.

During the next decade (1840–50), four more two-year schools had been started: North Carolina, Princeton, Louisiana, Cumberland University in Tennessee. The South was clearly progressing. The Princeton experiment, however, was abandoned in 1852, and Cumberland came down to Harvard's level the following year. The only two-year schools started during this decade (1850–60) were those of the University of Pennsylvania at the beginning, and of Columbia and the University of Michigan at the end.[1] It was not until after the Civil War that the two-year movement became general. Whereas in 1860 only six schools out of twenty-one offered a course of this length, in 1890 fifty-two out of sixty-one offered a course at least this long; and of these no less than fifteen offered something more. The development of the preceding half century is shown in the following table:

NUMBER OF SCHOOLS OFFERING DEGREE COURSES OF THE LENGTH STATED[2]

	1840	*1850*	*1860*	*1870*	*1880*	*1890*
One year[3]	4	6	12	12	13	8
One and a half years[4]	1	1	2	2	1	1
Two years	1	5	6	17	29	37
Two years, with additional work leading to a higher degree[5]					4	8
Three years[6]					4	7
Length of course not known[7]	1	3	1			
Total schools in existence	7	15	21	31	51	61

[1] The University of Nashville failed to secure support for a four-year course in law, described in its catalogue for 1854–55.

[2] The courses maintained by Yale and the University of Georgia prior to the institution of a degree are included.

[3] In 1890: Little Rock University, Arkansas; University of Georgia, Mercer, and Emory College, Georgia; Tulane University, Louisiana; West Virginia University; Cumberland University, Tennessee (one year of ten months after 1871); Central Normal College, Indiana (one year of 48 weeks).

[4] In 1890: Allen University, South Carolina (colored).

[5] One year leading to LL.M., except in Yale, where one year to M.L. and a year additional to D.C.L.

[6] For names of these and the preceding group of schools, see below, pages 176, 177.

[7] Dickinson, 1840, 1850; Lafayette, 1850; Louisville, 1850, 1860.

2. *Unreliability of this Method of Appraising the Degree*

The information given in the preceding section is significant principally as evidence of a general tendency to increase the requirements for the degree. As a basis for estimating the relative amount of training secured by the students in the several schools, it is practically worthless. To begin with, there were great variations in the length of the academic year, the law school sometimes having a much shorter year than that prescribed for the college. Among the one-year schools, on the other hand, were some with an unusually long year. The University of Michigan started by crowding all the work into a single "senior year" of six months; the school was a two-year school only in that before this genuine work could be accomplished, students must have spent a preliminary "year" either sitting at the back of the room watching the seniors recite, or in law office study or in actual practice. It was not until 1884 that the length of Michigan's law school year was raised to the nine months required in other departments of the university; and only after 1886 did it abandon the device of carrying students twice over the same ground. After the Civil War there was also a tendency to advertise a nominal two-year course, which could, however, be covered "by competent students" in a single year. New York University prior to 1864, and Yale for a few years beginning in 1869, were among the first schools to adopt this device, which subsequently became common in the South. At the University of Maryland students were known to do even the three years prescribed work in one. Notre Dame permitted mature students to cover its three-year course in two years. The practice was in part due to the weakness of these schools in the absence of a prescribed period of study prior to admission to the bar; in part it was a reflection of the old Jeffersonian antipathy to time requirements of any sort. It was encouraged by the action of the American Bar Association. This body adopted a resolution, fathered by its committee on legal education in 1881, which formally recommended a graded three-year law school course. The chairman of the committee, however,—himself a southern law school man,—explained, in answer to questions from the floor, that the resolution was not intended to prevent a student from covering the course in six months, if he could do so.

It should be noted also that even before the Civil War there had been in the eastern states a tradition—doubtless derived ultimately from the English Inns of Court—that three years was after all the proper length for a law school course. This had been the figure adopted

by Wilson in 1790 and by Hare in 1817 for their unsuccessful experiments at the University of Pennsylvania. In 1835 it had been proposed independently by John C. Spencer for Hamilton College and by Benjamin F. Butler for New York University. Hoffman's *Course of Legal Study*, published the following year, outlined three-year and four-year courses of reading—a two-year course only for "country practitioners." This tradition introduced still further complications into the situation. Harvard, in spite of the fact that it required only eighteen months residence for the degree, announced as early as 1823 that the course of study was drawn up with reference to a term of three years. Story printed in the catalogues a long list of textbooks, intended to be covered during this period, and in 1831 the students were graded as members of a Senior, Middle and Junior class. Both practices were continued until the accession of Langdell. In 1832, however, asterisks were placed before the titles intended to be covered in a two-year course, and in 1835 there was instituted a regular two-year cycle of lectures. This then went through an independent development of its own, being lengthened in 1844 to two years and a half, and reduced again in 1848 to two years, where it remained until the new era began, one half being given in each alternate year.[1] Meanwhile the degree requirement of eighteen months remained unchanged; and the third-year ideal evaporated into a vague statement that "for gentlemen who remain in the institution three years, other studies are prescribed."[2] Similarly, Princeton in 1846 combined a two-year requirement for the degree with the announcement of a three-year course of study; the old University of Chicago, prior to its partnership with Northwestern in 1873, combined a one-year degree requirement with a two-year course. The conflict between the amount of law that these institutions desired to teach and the amount that they dared to insist upon their students taking produced this double standard.

Other anomalies also existed, particularly along the line of giving credit for law studies not pursued in the institution. Three illustrations taken from the more advanced schools will suffice. Until 1870, Harvard had permitted two exceptions to its nominal requirement of one year and a half of resident work. Only one year need be spent here by students who had spent at least six months in another school, or by

[1] See below, pages 361–363.

[2] Or, beginning 1842, "beyond two years, other studies are from time to time prescribed."

students who had spent a year in any sort of legal study and had subsequently passed their bar examinations. The theory underlying both exceptions was that the complete time requirement must in any case be preserved, but that as regards the quality of the work some reliance might be placed upon other institutions, whether law schools or examining bodies. In 1871, under the influence of the English examination movement, Harvard abruptly abandoned this theory. Ability to pass its own annual examinations, covering a curriculum designed to occupy two successive years, was now the fundamental requirement for the degree. One year, as before, must be spent in residence here; but the first-year examinations were open to all. It was of no interest to the Harvard authorities how much time had been spent in preparing for this examination, or where it had been spent. Complete reliance upon its own examination was substituted for the former reliance upon a time requirement and somebody else's examination. When, after 1878, three annual examinations were required for the degree, and the school thus became to all intents and purposes a three-year school, it still continued true that three years of law study were not positively required. Two years must be spent in residence here. It was recommended that if only two years were thus spent, they should be the first two. In practice they were more apt to be the last two. Fully to appreciate the significance of the Harvard system, it should be noted that even during the residence years no account of attendance or recitations was taken. Ability to pass the examinations was in every year the ultimate test. The circumstance that during any one year technical residence was not required was therefore far less of an anomaly than a similar rule would have been in other institutions.[1]

Turning now to the two other New England schools, we find a different theory operating. Yale followed Harvard in offering the degree, in 1872, to students who, after passing an advanced standing examination, should do a single year's resident work; but in accordance with a belief that Harvard was making a mistake in relying upon an un-

[1] Because of the stringency of the examinations, few students attempted them except on the basis of resident study. The Dean's Report shows that in 1889–90 there were only 7 such attempts for the first-year examinations, out of a total of 86. and none for those of the second and third year. The third-year examinees included, however, one man who had entered in April and one who had been absent during the first half of both this year and the year before.

In 1894 it was provided that the missing year must have been spent in a law school, and in 1898 that only the first year might be thus forestalled.

checked examination system,[1] those who took this examination must also give evidence of having studied law for a certain period; and office study was reckoned as half the value of study in another law school.[2] Somewhat inconsistently with this theory, however, Yale continued to accord to all students who had passed their bar examinations the privilege of securing the degree in a single year; it did not even now add the proviso that Harvard had attached to its early rule, that such students must have studied law for a year prior to taking their bar examinations. Most illuminating also were the struggles of Boston University to reconcile its ambition to maintain a three-year course with its need for students. In 1877, the student must have studied two years in this school and one year anywhere; in 1878, one year in this school, one year either in this or in some other approved school, and one year anywhere; in 1880, he could also obtain the degree after a single year here if he had studied three years anywhere else, or if he had passed his bar examinations one year prior to admission; in 1883, the attempt to distinguish between study in an approved law school and office or private study was abandoned—two years study anywhere and one year here would yield the degree; in 1885, the degree would be awarded "in exceptional cases" for a total of two years study; in 1887, the degree was definitely promised to students who stayed two years in the school and secured "sufficiently high rank;" a note was added that "as a rule" the privilege would be restricted to those who were twenty-three years old and college graduates; this developed later into a definite rule granting the degree in two years to college graduates and members of the bar who completed the course with high rank.

3. *Higher Degrees* versus *a Lengthening of the Period for the First Degree*

It would be tedious to continue these illustrations of the futility of classifying schools according to the number of years nominally required for their degrees. It is of some interest, however, to note the two diver-

[1] See Baldwin, S. E., "Graduate Courses at Law Schools," in 11 *Journal of Social Science* (1880), 123.

[2] *I.e.*, non-college graduates secured a year's credit on their two years' residential requirement, on the strength of one year's study in another law school, or two years study in an office. College graduates secured a half year's credit on their one and a half year's residential requirement, on the strength of a half year in another law school or a whole year in an office.

In 1882 the rule permitting college graduates to secure the degree in a year and a half was abolished.

gent lines along which, by 1890, the degree course of fifteen schools had come to be extended beyond two years. Every school would have been glad to induce students to protract their law studies. The practical problem, expressed in its most naked terms, was this: How could the degree be manipulated so as to serve as a genuine inducement? One solution was to leave the LL.B. requirement at its previous maximum of two years, on the theory that the refusal to grant it after this interval would merely drive students into offices or into inferior schools; and to establish a higher degree as a symbol of higher attainments. This was the theory on which Columbia proceeded as far back as 1863, without success. The novel degree of LL.M. was offered for a year's additional work. For two consecutive years this degree was actually conferred, but thereafter the postgraduate year attracted no students, although for some time it continued to be announced in the catalogue.[1] Harvard adopted a similar device for a few years after 1873 and Boston University after 1874, both institutions utilizing for this purpose the ancient A.M. or M.A.[2] In 1876 Yale, encouraged by an informal postgraduate course maintained by correspondence the year before, inaugurated a one-year course leading to the degree of M.L. and a two-year course leading to that of D.C.L. Columbian College (George Washington) took up the one-year Master-of-Laws course the year following. Its local night school rivals, Georgetown and National Universities, quickly followed its lead. In 1890 a one-year M.L. or LL.M. was being offered also by Washington University (St. Louis), Northwestern, Michigan and Minnesota, yielding a total, including Yale's triple degree course, of eight.[3] The attendance at all these graduate law courses was, however, very small. The chief interest of this early movement for postgraduate work in law lies in the fact that it failed, and that the lesson of its failure seems to have been lost upon the present generation.[4]

[1] Following Lieber's death in 1872, the announcement that "a third year or postgraduate course has also now been organized for those students who may desire to pursue their studies beyond the regular course," was changed into an expectation that such a course would "soon be organized." The course had no reality after 1865. No names of students taking the course were printed in the catalogue.

[2] Restricted, however, in the case of Harvard, to candidates already possessing the A.B. as well as the LL.B.

[3] Beginning in 1887 Yale also offered the B.C.L. for a course paralleling its LL.B. course, but emphasizing Roman law, etc.

[4] My authority for the extent of the movement in 1890 is the detailed description of law schools contained in the Report of the U. S. Commissioner of Education for 1890–91, I, 414–432. The dates of origin have been taken from the university catalogues.

In addition to the schools named in the text, others were temporarily affected by

Although there was much in the existing condition of bar requirements to justify timidity in the schools, it is noteworthy that the lead in taking courageous action occurred in a state which did not protect its law schools in any way, namely, in Massachusetts. Boston University deserves the credit of being the first school to attempt a three-year LL.B. course; Harvard, that of being the first to attempt it successfully. The Boston school, at its first opening in 1872, announced a three-year course, and actually enforced it to the extent of refusing a degree the following June to one advanced standing student who could not show three years study. Following Harvard's announcement, however, of a postgraduate year superimposed upon a two-year course,[1] Boston pursued the same policy until Harvard announced, in 1876, a three-year LL.B. course, to go into full effect two years later. The delay enabled Boston University again to be the first professedly to inaugurate such a course, in 1877, on a level which, as we have seen,[2] it was unable to maintain. Harvard, with its superior resources and prestige, allowed no concessions from its three-year rule. The extraordinary influence that is exerted by a great university is strikingly illustrated by the fact that when in 1878 Judge Seranno C. Hastings, whose son had just been graduated from Harvard College, endowed the law school in San Francisco which bears his name, he organized it on a three-year basis. Direct Massachusetts influence doubtless also accounts for the appearance of the three-year LL.B. course in an evanescent negro school started the same year.[3] Thereafter the movement proceeded slowly, the University of Maryland and Notre Dame, in 1883, being the next institutions to fall partially into line, with three-year programmes that could be covered in less than three full

the movement. Thus, in 1874 the one-year University of Iowa school attempted an additional postgraduate year, which it did not formally abolish until 1882. Two years later a change in the bar admission rules enabled it to advance to a straight two-year LL.B.

In 1879 Boston University added to its ostensible three-year LL.B. course a two-year course leading to the LL.M. and a four-year course leading to the D.C.L. (seven years in all). This ambitious scheme was nominally in force until after 1890. In 1883 the University of Pennsylvania inaugurated, in addition to its two-year LL.B. course, a two-year LL.M. course, open both to graduates of any recognized law school and to members of the bar; and this technically survived (until 1897) the lengthening of the LL.B. course. In neither of these institutions, however, was this graduate work of sufficient importance to be reported to the Commissioner of Education in 1891.

[1] See preceding page.

[2] Page 175.

[3] Shaw (now Rust) College, Mississippi.

years.[1] It was not until 1888, when the success of the Harvard experiment was assured[2] and Columbia and the University of Pennsylvania were thereby encouraged to lengthen their courses, that there was no question but that three years was once more to be, as it had been in Philadelphia a century before, the orthodox length for a fully developed law school.[3]

We shall see later what the law schools proposed to do for their students to justify the expenditure of time required in order to secure a degree.

4. *Handicaps under which the Law Schools operated*

This development of a regular degree course of a definite and gradually increasing length may be summed up as follows: The colleges were still under the influence of what may be termed the quantitative theory of education—the notion that the entire field of any science can be mastered within a definite period of years. They had not yet reached the conception of the boundlessness of human knowledge that underlies both the elective system and graduate research study. Had the colleges been in control of legal education, they would doubtless have devised a curriculum, occupying some period assumed to be adequate for the purpose in view—in all probability three years. They would have fortified this curriculum by requirements of admission at the start, and by the award of a degree at the end. American legal

[1] See above, page 172.

[2] A large entering class in 1886, coupled with an increase in the number of old students returning, was accepted by Harvard as evidence of the success of its experiment. Prior to this date, there had been considerable fluctuations in the size of the entering classes, and only a small proportion stayed long enough to complete the course. The average period of attendance was only a little over a year and a half.

[3] The precise dating of an increase in the number of years required for the degree presents certain technical difficulties. The dates given in the text are the dates when the requirement went into effect for new students. Students already in the school continued to graduate under the old rule. The third-year work was not actually organized until the first three-year class was ready for it.

Boston University had from the beginning continued its original three-year curriculum without substantial change, but with a note stating that, for the present, attendance during the third year would be entirely optional. In 1877 three years study for the LL.B. was announced, which might, however, include a year spent elsewhere "under competent instruction." A final examination was required, but not, as at Harvard, successive annual examinations.

The Harvard curriculum was also continued without substantial change in content. In 1877 the three-year system went into effect, except for advanced standing students. In 1878 it was in effect for all students, and the advanced work was divided into second-year and third-year topics.

education would have been cut and dried, more effective, less plastic, less of a tax upon the powers of one who attempts to describe it. The colleges were not in control of legal education, however. On the contrary, they were only humble aspirants, seeking to gain a foothold. Prospective practitioners did not see the necessity of devoting much time to law study, in states where no period of preparation was prescribed; they were far from being certain that theoretical school studies were necessarily preferable to practical office work, even in states where they were obliged to take a definite amount of one or the other. The colleges might, by judicious use of their power to confer academic degrees, enhance the apparent value of their instruction to some extent; these degrees, however, possessed at first only sentimental value,[1] and, because of their novelty, not much even of this; bait of this sort was therefore not remarkably effective. Moreover, the colleges did not command sufficient financial resources to warrant them in offering instruction that few or no students would take. They were obliged, accordingly, to organize their law schools in such manner as to appeal to the greatest possible number. In the first place, they had to meet the wishes of those who would not come to the school if required to do more than the irreducible minimum of work demanded by the state. No vexatious obstacles must be thrown in the path of possible students. Entrance requirements were accordingly scrupulously avoided. In the second place, it was impracticable to offer these students more technical work than a considerable number could reasonably be expected to take, whether influenced by the desire of knowledge for its own sake, or by other considerations. The schools could offer a little more, but not much more, than the states required. The promise of a degree was utilized for the purpose of making this extra work attractive.

Prior to the Civil War, two years of honest work was, on the whole, or was thought to be, a little more than the traffic could bear. Consequently the schools came as near to this standard as they dared. Some made no pretense of giving more than a single year's course. Some gave a two years' course only in name. Some granted concessions to particular types of applicants, or made small demands upon the time and energies of any student. Harvard came to two full years of work, but did not raise its briefer degree requirement to correspond. Cumberland, after experimenting with two years for both course and degree, reduced

[1] For the practically valuable privilege of exemption from bar examinations, eventually attaching to the degrees of many schools, see below, pages 248–253, 263 ff.

both to a year and a half. The University of North Carolina, starting with a similar high requirement, declined to make any reduction, and in consequence had many casual students, but few graduates. Its experience indicates that other schools were justified in not attempting to advance beyond what the conditions of the times allowed. Before American university law schools could do much to raise the level of legal education, they had to acquire the prestige that belongs only to long established institutions.

After the Civil War, law schools had ceased to be experiments. At the same time the states were beginning to stiffen their own bar admission requirements, and the increasing complexity of the law made a lengthening of the course imperative. The time, in short, was ripe for an advance not merely to a genuine two-year standard, but even beyond. The addition of an obligatory third year to the degree course was, however, a bold step, from which at first the schools shrank. An optional third year, in which a higher degree might be earned, was first instituted by Columbia and later by several other schools. Harvard was the first law school to recognize the futility of this device, and to announce, in its stead, a lengthening of the course of study required for its original LL.B. After it had demonstrated the possibility of maintaining a law school on this basis, three years became the accepted standard for the leading law schools.

The general adoption of this three-year course during the following generation, through the efforts of the American Bar Association, and the eventual revival of the device of optional postgraduate degrees as a substitute for a further advance to a four-year course, are topics that can best be discussed in a survey of contemporary legal education. Merely to complete the record, it may be briefly stated that, in spite of the tremendous multiplication of law schools during this period,[1] the number of institutions that conferred the first degree after a course of less than three years was reduced from fifty-four in 1890 to twenty-three in the year of the declaration of war with Germany, and has continued to diminish since then.[2] During this period, however, the remaining institutions have become very different from one another, owing to the accentuated distinction between schools that require the

[1] See below, page 193, and Appendix, page 444.

[2] In the academic year 1920–21 there were only a single one-year school (Cumberland) and fifteen two-year schools, all located in southern states, Washington, D.C., and Indiana.

full time of their students as against those that do not, and owing to the fact that many of the full-time schools have established high entrance requirements. A classification of law schools on the single basis of the number of years that intervene between admission and graduation has never been a satisfactory one, and is now completely artificial and misleading.

CHAPTER XVII

ORGANIZATION AND FINANCIAL SUPPORT OF THE TEACHING STAFF

1. *Number of Instructors*

INSTRUCTION in these schools was at first usually given by a single teacher, as in the original southern schools, in Litchfield prior to 1798, and in the abortive attempts in the middle states. Under the influence of the later Litchfield school, however,[1] Harvard and Yale started with two instructors,[2] and Cincinnati Law School and New York University, in the decade between 1830 and 1840, started with three. Such comparisons are of little value. Always, especially in the cities, a larger number of instructors has usually signified merely that judges or practitioners give only part of their time to the school, rather than that a more comprehensive course of instruction is offered.[3] The tendency in every school has, of course, been to expand its faculty, but the University of Louisiana seems to have been the only one to claim as many as four professors prior to the Civil War. The University of Michigan added a fourth professor in 1866. Harvard and Pennsylvania did not rise to a full four-man basis until 1874. Dwight conducted his Columbia school virtually single-handed until 1875. By counting in lecturers, etc., in 1870 three schools, including Dwight's, claimed a faculty of six, Harvard claimed seven, and Washington University (St. Louis), eight.

The present long lists of men giving all or part of their time to a school are more recent phenomena. Faculties of fifteen or more are now not uncommon.

[1] See above, pages 130, 131.

[2] Pages 138, 141.

[3] So, for instance, in Cincinnati, where the faculty of three — a judge, and two practitioners who had studied, one at Litchfield, the other at Harvard — offered a course completed in a single session of four months. For what the information is worth, it may be recorded that the following is believed to be a complete list of the schools that started with or rose to a three-man basis between 1840 and the Civil War: Transylvania, 1840; University of Louisville, 1846; Princeton, 1847; Louisiana (four professors), 1847; Harvard (two professors and a lecturer), 1848; University of Albany, 1851; University of Pennsylvania, 1852; University of Nashville, 1854; Cumberland, 1856; Harvard (three professors), 1856; University of Georgia, 1859; University of Michigan, 1859; University of Chicago, 1859.

2. *The Dominant Type of University Law School*

The typical American law school, after Harvard and Yale had provided the formula, became, and has continued to be, one that is associated, loosely or intimately, with a non-vocational college. As the various vocational departments of the parent institution have grown in importance, its title has usually been changed from "college" to "university."

As regards the organic relationship of the law faculty to the university at large, the principal distinction during the early years was between Harvard and Virginia, on the one side, where the law school received effective financial support, and all other schools, where it did not. Whether, following the model of Yale, these other schools were adopted children,[1] or were ostensibly founded by the university, their practitioner teachers were in all cases left to fend almost entirely for themselves. Even when the school had no existence prior to the appointment of a practitioner as Professor of "Jurisprudence" or of "Law," the initiative came quite as often from the practitioner as from the college. A lawyer member of the board of trustees was peculiarly in a position to put through a friendly arrangement whereby a proprietary law class might advertise itself as a university school, conferring upon its graduates an academic degree, and often also given at least the use of rooms in the college building. Greater financial assistance than this, a weak denominational college was usually unable to provide. Nor, in the case of a state university, was the legislature disposed to expend public money for any such purpose as legal education. Lawyer members were satisfied with the office training that they had themselves received; lay members were not interested in helping an unpopular profession.[2] Under such circumstances it was eminently proper that the practitioner teachers, who assumed all the risks, should collect all the fees. Not every financial fact is known in regard to every school. Certainly, however, the overwhelming majority of schools prior to the Civil War were conducted

[1] Cincinnati Law School, founded 1833, adopted by Cincinnati College 1835; Lumpkin Law School, founded 1843, adopted by the University of Georgia the same year; Battle's Chapel Hill School, founded 1843, adopted by the University of North Carolina 1845; Lexington Law School, founded 1849, adopted by Washington College, later Washington and Lee University, 1866.

[2] As late as 1880, it was possible for a member of the American Bar Association to enquire, "I would like to know in what state a legislature would consent to expend public funds for the education of lawyers. It would be extremely unpopular." In 1892 a member denounced such action as unconstitutional.

thus by educational promoters rather than by a salaried staff.[1] Effective control can be secured only through the power of the purse. While, in a purely formal sense, the contribution of the mid-century may be summed up as the definite assumption of the burden of legal education by the American college, the burden must be confessed to have sat lightly upon it for the time. For all practical purposes, these were independent schools masquerading in university guise. In varying measure they doubtless did meritorious work along the lines of the original Yale school, relatively untouched either by the idealistic breadth of Virginia or by the scholarly traditions of Harvard.[2]

In view of the prevailing poverty of the colleges and the early unpopularity of law schools both in the profession and in the community at large, it was inevitable that in many schools this phase of a purely nominal university connection should come first. The generation prior to 1870 performed the invaluable service of disseminating this type of school throughout the country. It was a great accomplishment to construct so much educational machinery. Subsequent generations have put this inheritance to better use, sometimes a little too much in a spirit of contempt for their predecessors. Due credit has not always been given to the courage and self-sacrifice displayed by educational promoters, by "proprietary law school teachers," in their efforts to bring primitive institutions into existence and to keep them alive—to establish, in short, against the hostility of the profession itself, the claim of the American college to participate even in a nominal way in the professional training of American lawyers.

With the passage of years, however, the parent institutions of these schools, and of others more recently organized, have usually, though not invariably, recognized that their own reputation is endangered by the presence of uncontrolled elements in the university organization, and have therefore adopted one of two policies. Some have either abolished the law school or cut it adrift; others, as their resources have

[1] The only known exceptions are Virginia, Harvard after 1829, and, at the very close of the period, the University of Michigan.

[2] The Harvard tradition of scholarly publication was continued by Greenleaf (1842–50), Parsons (1853–69) and Washburn (1860–68). Judge Cooley's series of publications from the University of Michigan, appearing between 1868 and 1880, may perhaps be reckoned as the next notable contribution to legal scholarship outside of Harvard. Mention may also be made of Timothy Walker's *Introduction to American Law*, 1837 (Cincinnati Law School); Sharswood's *Professional Ethics*, 1854, and *Blackstone*, 1859 (University of Pennsylvania); Minor's *Crimes and Punishments*, 1869, and *Institutes*, 1875–95 (University of Virginia).

permitted, have centralized the financial administration of the law department, collecting the fees and defraying the expenses, including salaries to the instructors. A condition of virtual independence, during which schools were transferred from one college to another[1] or were even run under the auspices of two colleges simultaneously[2] and sometimes took out separate charters of incorporation,[3] has tended to be converted into a situation more resembling "home rule"—a type of university organization in which a strong tradition of local self-government survives under a theoretically absolute control possessed by the university authorities. So Columbia, in 1878, ended Dwight's large profits from his successful law school by putting him on salary. The Cornell school prided itself upon being, from its beginning in 1887, "coördinate in all respects with other university departments."[4] Other important universities that soon adopted the policy of collecting the tuition fees and defraying the expenses of their law departments were the University of Pennsylvania in 1888, New York University in 1889, and Northwestern University in 1891, upon the death of Henry Booth, the original dean and proprietor of the law school. If many universities have been slow to effect this change so that even to-day examples of the masquerading type of university law school may be found,[5] the reform is none the less one that in time is pretty certain to be introduced everywhere, because of its obvious desirability.

The beneficial effects of this more intimate connection between the school and the university authorities consist partly in the opportunity it gives to a vigorous president to remodel a department that in his judg-

[1] So the Iowa College of Law, transferred from Simpson Centenary College to Drake University in 1881.

[2] Illinois' oldest law school, founded by the old University of Chicago in 1859, was operated between 1873 and 1886 as a joint department of this now extinct institution and of Northwestern University, under the name of the "Union College of Law."

[3] So the University of Georgia's Lumpkin Law School, in 1859; Northwestern's Union College of Law, after the dissolution of the partnership with the University of Chicago, in 1888; Lake Forest University's Chicago College of Law in 1888.

In the two first named instances the charters proved to be without practical importance. The Chicago College of Law, on the other hand, later combined with the Kent Law School, a corporation formed by seceders from the Union College of Law, and since 1902 has been frankly independent, under the name of the Chicago Kent College of Law.

[4] It was manned by resident professors called from other institutions, and was one of the first schools to carry the passion for university symmetry to the point of prescribing fifteen hours weekly instruction for students in all departments.

[5] The University of North Carolina did not assume the budget of its law school until 1899, Yale not until 1904.

ment, as responsible head of the university, requires such treatment. Eliot's regeneration of the Harvard law school in 1870, after its quarter century of staleness following Story's death, is the most conspicuous illustration of what may be accomplished by this means. Efforts to change the character of the Columbia school, when Dwight was relieved from financial control, failed at the time, because of his international reputation as the foremost law teacher in America,[1] but were later resumed, with greater success, by President Low. More important, however, than the centralization of authority in hands where it may or may not be wisely exercised, is the fact that the placing of the teaching staff on fixed salaries frees them (supposedly) alike from financial embarrassments and from the temptation of inordinate financial gain, and thus removes a direct personal incentive to identify "success" with a large attendance of paying students.

In a few cases, the orderly development of law schools, loosely affiliated with a college, into either true university departments on the one hand, or into a condition of avowed independence on the other, has been checked by the fact that the loose form of union originally adopted was one that could not easily be changed. The terms on which the Albany Law School, for instance, became a part of the so-called Union University, in 1873, are described in the following section. Hastings College of the Law, of San Francisco, while nominally affiliated with the State University located at Berkeley, possesses a protected position, under the act of legislature establishing it in 1878, which has proved a great embarrassment to the university authorities in recent years. Since then a few other schools have made contractual arrangements with colleges, which make it difficult for the latter either to make the connection more intimate or to break it off altogether. And not infrequently, especially when the law school is situated in a different town from the college or university, the authorities of the latter have been contented with an arrangement that relieves them from either financial or educational responsibility.

In general, however, there has been no organic reason why a closer financial union, carrying with it some measure of university supervision

[1] See the opinions of Dicey and Bryce, quoted in *A History of Columbia University, 1754–1904*, p. 343. These opinions were expressed on the basis of visits made in 1871. By 1885 Harvard had begun to secure English recognition. For the importance attached to this, see Wigmore's account of the impression produced that year upon Harvard students by the visits of Finch and Pollock, in 30 *Harvard Law Review* (1917), 815.

over the work of the law school, should not be substituted for the original loose union, and this has been the strongly prevailing tendency. The typical American university has developed along lines that render it increasingly possible for its historic nucleus—the college of liberal arts—to make its influence felt upon the professional law school. Not only is the taint of commercialism thus removed from these schools, but within the present generation study in the college has come to be required by many universities as a necessary preliminary for the technical work of the law department. Or, to sum up, the organic development of the university started with the loose attachment, to a college, of virtually proprietary professional schools. Next came a system of coordinated college and professional departments, dominated by similar ideals, but competing with one another for students. Now many of these have developed into a type of university of which the college is not merely the core but also the basis and fertilizing ground; in the liberal education provided by the college the work of advanced professional schools is definitely rooted.

3. *Aggregations of Professional or Vocational Schools*

In 1890 about five-sixths, in 1917 about two-thirds, of the total number of residential degree-conferring law schools were of the general type above described. The remainder were either parts of compound institutions not containing genuine colleges of liberal arts, or were wholly independent.

The earliest representatives of the compound institution originated in an effort to expand medical schools, rather than colleges, into universities. The first unsuccessful attempt to build up the University of Maryland at Baltimore, in this manner, has already been described.[1] Similar attempts produced the law schools of the University of Louisville in 1846, and of the University of Albany in 1851; and in 1870 the Maryland school was revived, under the original charter. In all three cases the following was the sequence of events: first, the existence of an already successful medical school; second, the securing of a broad university charter, under which college and law departments might be operated with power to confer appropriate degrees; third, the actual launching of the law department, at the dates named; fourth, at a much later date, the final realization, at least in a formal sense, of the original

[1] Pages 123–126.

university project. The steps by which this consummation was reached, and the nature of the finally created university, have not been so uniform. In Louisville, the medical and law departments were the only ones organized until 1907, when a grant of municipal funds finally made it possible to open a college, of a type differing widely from the old-fashioned cultural institution. The University of Maryland similarly consisted only of medical and law departments until this same year (1907), when it entered into a nominal affiliation with old St. John's College, at Annapolis. In Albany, even the medical school declined to surrender its independence on the terms originally contemplated, so that, for over twenty years, only a law department operated under the university charter. Finally, in 1873, through legislation and agreement, the medical school, the law school and an astronomical observatory, all located at Albany, and old Union College of Schenectady were nominally combined into the present so-called Union University. Although under the new charter the title "Albany Law School" was substituted for the original "University of Albany," the school retained power to control its own property and to confer its own degrees. A joint annual commencement, held for ceremonial reasons, seems to be the sum and substance of the university connection. Later surviving law schools, that owe their origin to similar causes, are those operating under the names of National University (Washington, D. C.),[1] University of Buffalo[2] and University of Memphis.[3]

After the Civil War the precedent set by medical schools was followed by other institutions. The law school of Boston University grew in a similar way out of a long established theological school.[4] Although

[1] Under the original charter secured under the general incorporation laws in 1869 (newly chartered by special act of Congress in 1896), the department of law was the first to be organized, in 1870. A night medical department was also operated after 1884, and also a dental department for a time. Since 1906, or earlier, however, the law school has again been the only department.

[2] A group of practitioners organized a law school in 1887. At the outset they secured the privilege of obtaining degrees from the Roman Catholic University of Niagara. Two years later, however, they took advantage of the broad University of Buffalo charter, under which a local medical school had operated since 1846.

[3] Formed in 1909 by adding to an already existing medical school departments of pharmacy, dentistry and law. By 1913 all departments except the law school had been taken over by the State University.

[4] Boston Theological Seminary, organized about 1847, was formally transferred to the new university trustees in 1871. The following year the School of Law and a College of Music were added; a year later, a College of Liberal Arts, a homeopathic medical school, a School of Oratory, and a preparatory academy located in Rhode Island.

a "college of liberal arts" was promptly added, the absence of dormitories differentiated this from the traditional American college. In the Middle West the absence of other adequate provision for the training of public school teachers resulted in the rise of private normal schools. By 1890, five of these, as an incident of attempts to develop into "universities," had started law schools.[1] Still later, business colleges, and the Young Men's Christian Association as part of its general system of vocational training, entered the field. Including a few residential offshoots of the correspondence school movement, the outbreak of the War with Germany found degrees being conferred by about twenty law schools that on the one hand were not avowedly independent, but on the other hand stood apart from the beaten track of university development.

4. *Independent Law Schools with Power to Confer Degrees*

Faced with the competition of these two types of institutions, the old-fashioned private law school of the Litchfield type, after the middle of the century, became almost extinct. So far as is known, only one such institution was started between 1850 and the Civil War, and only one during the following decade.[2] The explanation is to be found only in small measure in the financial support given to the university schools. This, as we have seen, was prevailingly slight. It was due rather to the prestige of the college or university name, and above all to the power they possessed under their charters to confer degrees. That this academic distinction might be awarded by an avowedly independent law school seems not to have been regarded as a possibility, prior to the Civil War. The English LL.B. had stood for an academic training in general culture and Roman law. The American LL.B. had come to stand for purely vocational work, but still the tradition persisted that it must be conferred by an academic body.[3]

Already, however, the force of this tradition had been weakened by

[1] Valparaiso University, Indiana, 1879; National Normal University (Lebanon University), Ohio, about 1884; Ohio Normal University (Ohio Northern University), Ada, Ohio, 1885; Central Normal College, Danville, Indiana, 1888; Northern Illinois Normal Institute, Dixon, Illinois, 1889.

[2] See Appendix, page 433, for the names of all such schools that have been found, prior to 1890. Doubtless others existed.

[3] In 1859 the Lumpkin Law School, affiliated with the University of Georgia, was empowered in its separate charter of incorporation to issue diplomas which would admit to practice. Nothing was said, however, about degrees, which since this date have been conferred by the University.

certain special developments. In the first place, old Cincinnati College, when in 1835 it took the recently established Cincinnati Law School under its wing,[1] made a similar incursion into the field of medical education. This latter experiment, however, was abandoned in a year or two; and about 1845 the entire attempt to build up a university collapsed, through the closing of the original academic department. This left only the law school operating under the original college charter. The recent history of legal education in Cincinnati has largely revolved around the attempt of the new municipal University of Cincinnati to absorb this institution, whose independence was fortified by its possession of the original college endowment and the valuable degree-conferring privilege. After an attempt to secure control through legislation had been defeated by the courts[2] and a rival school had been operated for a single year, in 1897 a fusion faculty was formed under the College and a contract was entered into whereby the University was to furnish funds without exercising control. In 1910 this anomalous arrangement was terminated and the school again became independent of the University in name as well as in fact. It is the only instance in this country of a law school which, after having been at one time affiliated with an old-fashioned college, inherited all the latter's rights and possessions.[3]

Here, then, was a law school which, although operating under a college charter, was, as a matter of fact, independent. Furthermore, the sanctity of the academic tradition in regard to law degrees was not helped by the fact that at just about the same date the Louisville LL.B. began to be awarded, in theory by a "university," but in practice by a law school nominally controlled by a medical school. And after 1851, as we have seen,[4] there was also a "University of Albany" which consisted of nothing except a law school. With these hollow mockeries before them, it was small wonder that the attitude of the public toward the LL.B. slowly changed. During the generation before the Civil War, this degree secured that limited popular recognition (as compared with the genuine respect paid to the M.D.) that it now enjoys, but in the process of becoming popularized its original slightly academic flavor was irre-

[1] The college was chartered in 1819; the private law school was started in 1833.

[2] *Ohio* v. *Neff*, 52 Ohio State (1895), 375.

[3] Finally, in 1918 the school was again absorbed by the University, on terms reflecting great credit upon both parties.

[4] Page 188.

trievably lost. It became the symbol of a successfully completed professional law course—this and nothing more. The theory that only colleges or universities might properly confer an LL.B. became too transparent a pretense to be continued.

The final step was taken in 1866. A night law school, started the year previously at Des Moines by two justices of the Iowa Supreme Court, with whom William G. Hammond had become associated later in the same year, was incorporated as the Iowa Law School, with power to confer the LL.B. degree. Twelve graduates actually received the degree in 1866. The event may be said to mark the culminating triumph of the practitioner over the cultural college in his effort to retain control of legal education. In the great majority of cases the entrance of the college into this field had not operated to broaden the ideals of the original Litchfield type of the school. On the contrary, it resulted in the private schools' running off with the imposing panoply of a "bachelor's degree." Henceforth, if the universities were to seek adventitious aids for the purpose of attracting law students within their gates, they must appeal to the state for special privileges. They could not rely upon the mark of academic distinction by which the European university had fostered the solidarity of the educated class. They could not claim the exclusive right to determine, through the conferring of a consecrated degree, who should or should not be recognized as highly educated.

This new type of independent law school did not assume any importance for some years. Hammond's own school was absorbed almost at once by the State University,[1] and the only other avowedly independent school that conferred degrees prior to 1890, so far as known, was the Central Indiana Law School, started in Indianapolis about 1881, but not surviving the decade.[2] The type was unnecessary for the moment, for the reason that its special advantages from the point of view of its promoters—power to confer a degree, coupled with freedom from

[1] In 1868 the faculty was annexed and removed to Iowa City, under a contract whereby the University agreed to recognize degrees already conferred by the school as its own. Hammond, chancellor first of this school and later of the St. Louis Law School (Washington University), was at one time a prominent representative of the law schools at the meetings of the American Bar Association and chairman of its Committee on Legal Education.

In 1875 another member of the original faculty organized at Des Moines the Iowa *College* of Law, mentioned on page 185 as having been affiliated first with Simpson Centenary College, and later with Drake University.

[2] This school was never even incorporated. Its graduates claim, however, to have received the LL.B. This is the most extreme degradation of the original theory of the LL.B. that has been discovered.

the control of trustees—could be better secured in other ways. The movement to multiply law schools coincided with a movement to multiply universities. The trustees of colleges or other institutions which possessed or might acquire the power to confer university degrees of every sort were only too willing to grant the use of it on easy terms. This would have been the golden age of law schools if "academic freedom" were all that is necessary for educational salvation. Law school faculties in general were allowed to do about as they pleased, and with few exceptions were already, to all intents and purposes, proprietors of the school, assuming the risks and pocketing the profits, if any. It was a theory of educational organization that lent itself to the mushroom growth of so-called university schools which, as already pointed out, sometimes have survived in substantially their original form, sometimes have developed into genuine law departments, of the Virginia–Harvard–Michigan type, often, however, have abandoned the struggle for existence.

In 1890, however, came the historic controversy between President Low of Columbia and Theodore Dwight over the question of introducing the Harvard case method, as a result of which Dwight with a portion of his faculty left the school. For the purpose of perpetuating Dwight's methods of instruction, his adherents organized the New York Law School. Their success in securing, first from the New York Board of Regents in 1891, and six years later from the legislature, a special charter, giving them power to confer degrees, opened the eyes of law school promoters throughout the country to the possibility of securing this great advertising advantage without dickering with a college.[1] The discovery coincided with the growing demand for night law schools, which could be started most easily in this way. In 1917 there were twenty-six frankly independent degree-conferring schools, besides three that operated under the cloak of a college or university charter.[2] It should be noted also that among the schools connected with colleges are some where the connection is very slight, and the college does not dare to make it closer for fear of losing even its present slight hold. With the breaking of the academic monopoly in law school degrees, the college has lost one of its points of leverage upon legal education.

[1] See below, page 234, note, for a recent Massachusetts episode, especially illuminating because here, as in New York, general legislation designed to prevent the indiscriminate granting of degrees had been previously enacted. In most states independent law schools have no difficulty in securing the degree-conferring privilege under general laws.

[2] For number of each type of organization, see Appendix, page 445.

CHAPTER XVIII

MULTIPLICATION OF LAW SCHOOLS AND LAW SCHOOL STUDENTS AFTER THE CIVIL WAR

1. *Number of Law Schools*

AT the outbreak of the Civil War, the total number of degree-conferring law schools was twenty-two, of which eight were in the southern states, including Kentucky. There were at this time sixty-five medical schools. As a result of the conflict, all the southern law schools except the University of Virginia were closed, but all except old William and Mary promptly resumed operations.[1] Only one northern school closed during the war, and new ventures or revivals of old schools, both in the North and in the South, brought up the total by 1870 to thirty-one, or double what it had been twenty years before. Between 1870 and 1890 this figure was again doubled, and between 1890 and 1910 doubled once more. By this date the saturation point had been nearly reached. The rate of increase since then has been much more moderate.[2] Law schools still continued to increase, however, while, since 1904, the number of medical schools had begun to diminish. In 1910–11 the number of law schools for the first time exceeded that of medical schools, and since then the excess has become progressively accentuated.[3]

The Civil War decade saw the beginning of the modern part-time law school intended for students engaged in other occupations[4] and the first law school for negroes.[5] This was also the first decade in which law

[1] The law school of the University of North Carolina did not suspend operations until 1868, reopening in 1877.

[2] The following table shows how the number of law schools doubled every twenty years between 1790 and 1910:

	1790	*1810*	*1830*	*1850*	*1870*	*1890*	*1910*
Number of schools surviving	1	2	6	15	31	61	124

The decade showing the greatest arithmetical increase was 1890–1900: net increase of 41 schools. At the outbreak of the War with Germany, there were 140 schools; in 1920–21, 142. For further details, see Appendix, page 444.

[3] According to the statistics of the American Medical Association, the number of medical schools in 1916–17 had fallen, after a large intervening increase, below the figure of 1880. The number of law schools meanwhile had increased nearly 175 per cent, and from having been 49 per cent under was now 46 per cent over the medical school figure. In 1920–21 the excess was 69 per cent. For comparative figures, see Appendix, page 443.

[4] See below, pages 394–402.

[5] The law department of Howard University, Washington, D. C., still in operation, was opened in 1868. In the Chronological List in the Appendix will be found the names of eleven subsequent colored schools, of which one claims to be still in existence.

schools were permanently planted west of the Mississippi,[1] in which law schools were operating in a majority of the states, and in which the duplication of law schools in a single state began to be common. Since then the number of states containing law schools has doubled. Since 1840 schools have been planted, in states where they did not previously exist, at the average rate of one every two years. In 1917 there were only seven states not provided with a law school.[2] The principal cause of the recent increase in the number of schools, however, has been their multiplication within states already containing one or more. Once a law school had been established, it bred rivals very quickly. In 1859–60, of the fifteen states containing law schools, New York had four schools, Virginia, Kentucky and Indiana had two apiece, the other eleven states only one. After 1880 a majority of the states, if they had any law school, had more than one. In 1890 seven states contained three or more schools each, aggregating almost half the total number of schools. In 1917 nine states, with five or more schools apiece, accounted for over one-half of the total. Indiana and the District of Columbia each contained eight, New York and Ohio nine, California ten and Illinois twelve law schools.[3]

The great urban development after the Civil War has exerted a marked influence upon the number and distribution of law schools. Large cities have more and more established their claim to be regarded as the natural home of legal education, partly because little old towns, like Cambridge, in which schools had already been started, grew into cities or suburbs, but more because practitioner teachers and students for new schools could thereby be most easily secured. Until 1870 New York was the only city which supported two law schools. By 1890 Chicago and Baltimore also had two schools, and Washington, D. C., four, including the Howard University school for negroes. Of cities containing over 100,000 inhabitants, 46 per cent had law schools, aggregating 31 per cent of the total number. In 1917 St. Louis and San Francisco each had four schools, New York City five, Washington eight and Chicago nine. No less than 59 per cent of the cities containing over

[1] In addition to Hammond's school, absorbed by Iowa State University in 1868, the St. Louis Law School of Washington University, to which Hammond was subsequently called, was started in 1867; the University of Wisconsin College of Law in 1868.

[2] New Hampshire, Vermont, Rhode Island, Delaware, Nevada, New Mexico and Wyoming. In 1920 the University of Maine College of Law was suspended, and a branch of the Northeastern College School of Law of the Boston Y. M. C. A. was started in Providence, Rhode Island.

[3] For details of the development, see Appendix, pages 446–447.

100,000 inhabitants[1] now had law schools, and the aggregate of these large-city schools was eighty-five, or more than 60 per cent of the total number of law schools in the country.[2]

2. *Relative Attendance at Individual Law Schools*

The two largest ante-bellum law schools were both hurt by the Civil War, though in unequal measure. Cumberland's buildings were burned. Harvard lost its southern clientèle.[3] The new University of Michigan school, helped from the outset by the University's liberal financial policy, and, after 1864, by the distinguished career of Professor Cooley on the Supreme Court bench of his state, immediately assumed the lead in number of students and in reputation throughout the northern and middle West. Two years after the war (1866–67) it had 395 students, or more than double the record pre-war attendance of Cumberland. Simultaneously, in the rich New York City field, Dwight's Columbia school scored a decisive victory over New York University. It enjoyed the unique distinction of increasing its attendance during each year of the war,[4] and after having been at one time distanced by the new part-time school of Columbian College, Washington, D. C. (the present George Washington University), ended the decade as the second largest school in the country, with well over 200 students. Harvard had to be content with fourth place, with Albany fifth and Virginia sixth. No other law school had as many as 100 students.

In 1872–73 Columbia wrested the lead from Michigan, attaining three years later the record figure of 573. By the end of this decade Judge Hastings' recently founded school in San Francisco had secured third place, with Harvard fourth. In 1890 Columbia and Michigan,

[1] Census figures of 1920.

[2] Of cities containing over 200,000 inhabitants, only five lacked law schools in 1890 (Brooklyn, Milwaukee, Cleveland, Pittsburgh and Detroit), and only four in 1917 (Jersey City, Rochester, Providence and Akron). The aggregate number of schools in cities of this size was 17 in 1890 and 72 in 1917—respectively, 28 per cent and 51 per cent of the total number. In 1920 a school was started in Providence.

[3] In 1829–30, out of a total of 24 law students listed in the Harvard College catalogue, 18 were from Massachusetts, 2 from other New England states, 4 from the South. The percentage of attendance from southern or border states in subsequent years was: 1839–40, 20 per cent; 1849–50, 22 per cent; 1859–60, 23 per cent. The latter figure included 11 per cent from the seceding states alone. Compare page 153, note 6.

[4] For a detailed study of the effect of the Civil War upon law school attendance, see 12 *Annual Report, Carnegie Foundation* (1917), 119–123; and compare, as to the immediate effect of the War with Germany, the writer's pamphlet, *Legal Education during the War*, 1918, 1–12 (an expansion of 13 *Annual Report*, 121–122).

with over 400 students apiece, were still the two leading schools. Harvard, with between 250 and 300, was now a poor third. Two part-time schools in Washington, D. C., each contained over 200 students, and Harvard's Boston rival nearly as many.

Since 1890 two principal causes have affected the relative attendance at individual schools. In the first place, the raising of standards by successive schools has usually, though not invariably, been reflected in a diminished attendance, at least for a time. In the second place, under a system of free competition among law schools the increasing group of part-time schools has had the double advantage of securing students who are excluded from other institutions by the raising of standards, and students who could not under any circumstances have attended a full-time law school.

The most conspicuous illustration of a school which has profited in reputation and attendance by a bold advance is Harvard. Its action in requiring a college degree for admission, if it operated to exclude some local students, attracted college graduates from all over the country. For nearly twenty years the rise of large part-time schools kept it in third, fourth, or even fifth place. Meanwhile, however, its own attendance steadily climbed with very few recessions, until first in 1910–11, and again in 1916–17, it regained its original position as the largest American law school, with over 850 students.

Columbia and Michigan have not fared so well. At Columbia the forcible introduction of the Harvard case method, against the opposition of a considerable portion of the faculty and the local bar, led to the starting of the rival New York Law School, which at once became the second largest school in the country, and in 1904–05 outstripped even Michigan. In 1906–07 this school had 1050 students, establishing a record for all schools prior to the War with Germany. Faced with competition from this source, and from the New York University law school, the Columbia attendance dropped at once to between 200 and 300; then gradually rose to between 400 and 500; then, following the requirement of three college years for admission, lost its entire gain, dropping, in 1907–08, to less than 250 students. In 1916 it had risen again to over 500. Meanwhile, Michigan's curve had been just the reverse of this. Regaining in 1892, after the Columbia *débâcle*, its position as the largest law school in the country, it kept this primacy for thirteen years, with a steadily mounting attendance that exceeded 900 when it was finally passed by that of the New York Law School. Then came an

increase in Michigan entrance requirements, followed by a loss of students, notably to Detroit part-time schools, which reduced the attendance to between 500 and 600 in 1916. In other words, Michigan and Columbia were together again, but after a lapse of a quarter century their attendance had increased very moderately, and instead of being the two largest schools, they now ranked as seventh and eighth.

The other large law schools since 1890 have all been institutions offering part-time instruction either exclusively or in addition to full-time work. Several of these have already been mentioned. The University of Minnesota law school had over 600 students in 1909. For five successive years, beginning 1911–12, the Georgetown University law school with approximately 1000 students was the largest in the country. During three of these years, Chicago Kent came second, at one time exceeding 800. In 1915–16, the six schools having over 600 students, all located in or near large cities, were, in the order of their size, Georgetown, Harvard, New York University, Chicago Kent, University of Southern California, New York Law School, with Michigan and Columbia the only two others having more than 500 students.[1]

"Large law schools," it will be seen, are now, roughly, five times the size of such institutions prior to the Civil War. This does not mean, however, that legal education is being concentrated in a few centres, at the expense of smaller institutions. On the contrary, the tendency of law school growth since 1870 has consistently been in the opposite direction, as appears from the following table, which shows the percentage of the total number of law school students contained at the given dates in the largest school or group of schools.

	1869–70	*1879–80*	*1889–90*	*1899–1900*	*1909–10*	*1915–16*
	%	%	%	%	%	%
Largest school	18	14	10	6	4	4
Largest two schools	31	26	19	13	9	8
Largest three schools	41	32	25	18	13	11
Largest six schools	61	46	38	31	22	19

[1] The figures used in the above comparison are those of the U. S. Commissioner of Education. For table, see Appendix, page 452.

For the year 1916–17, during which war was declared, no comparative statistics were published, and although efforts were made by the Foundation to secure figures, in the confusion of the time not all schools could respond. Harvard, however, reported 857 and Georgetown 823 students.

In 1919–20 the catalogues showed: Georgetown, 1052; New York University, 979; Harvard, 883; George Washington, 752; Fordham, 687; Suffolk, 591; Columbia, 548; Boston, 522; no other school as many as 500. These figures include summer students.

3. *Aggregate Number of Law School Students*

In 1860 the total number of law school students in the United States was about 1200, or four for each hundred thousand of the population. During the next thirty years the population increased at a uniform rate each decade, almost precisely doubling by 1890. The number of law school students, however, increased during this period nearly fourfold, to over 4500, or seven for each hundred thousand inhabitants. This was relatively a larger increase than occurred in the two other so-called learned professions. Legal education was still, however, a comparatively unimportant branch of higher education. Between 1870 (the first year for which comparative statistics published by the U. S. Commissioner of Education are available) and 1890, law school students rose from one-seventh to one-sixth of the total number of professional students.

Since 1890 the population has increased more slowly. The number of law school students has meanwhile increased more than fivefold, to approximately 23,000 at the outbreak of the War with Germany, or twenty-three for each hundred thousand inhabitants; the number of theological students has increased almost uniformly with the population; the number of medical students, after an intermediate increase, is now smaller than in 1890, and, proportionately to the population, smaller than in 1870. The number of law school students soon exceeded that of theological students, and since 1911 has exceeded that of medical students. It now constitutes about 40 per cent of the total attendance in these three branches of professional education.[1]

In interpreting these figures, care must be taken not to confuse "law school students" with "law students." The increased attendance at the law schools has been due to a combination of causes. In the first place, owing to the transformation of the country from an agricultural to an industrial community, there was a genuinely increased demand for lawyers, which soon came to be more than fully satisfied by a general drift into the professions. This led to an increase in the number of law students, including under this term those who studied either in a law school or in a law office.[2] In the second place, the schools having now established their reputation of affording in general, within certain limits that will shortly be discussed, the best preparation for admission to the bar,

[1] For tables, see Appendix, page 443.

[2] This drift was part of a still broader tendency, reflected in a simultaneous great increase in the number of college students, to secure a type of education that carries with it a suggestion of superior social standing.

an increasingly large proportion of these law students resorted to the schools in preference to the offices. And in the third place, when the initial difficulties of launching a law school had been overcome, the further obstacles to its progress were comparatively slight. Both because of the low standards of admission to the bar, and because of the direct financial interest often felt by the school authorities in seeing the school increase in size, and because, finally, study of the law has, or can be made to have, a much broader appeal to young men than medicine or theology, opening the door as it does to politics and business, rather than demanding a highly specialized aptitude or a spiritual calling—for all these reasons the whole tendency of the system was to make law schools grow beyond the immediate needs of legal practice in the old-fashioned narrow sense. Law schools, especially night schools and state university schools with low tuition fees, by making legal education more easily attainable, served as training schools for a new type of law school graduates who might or might not practice according as the opportunity should later arise. They thus broadened or demoralized—in any case transformed—the profession they were originally designed to serve. They moved forward of their own momentum, creating a new field in addition to cultivating the old. They taught the many a little law, instead of starting a relatively few on the road to becoming expert professional lawyers.

The relatively great increase in the attendance at law schools, as compared with that at medical and theological schools, is the result of all three of these special causes.[1]

[1] In measuring the growth of law school attendance, by itself, allowance must also be made for the effect of the lengthened course, which tends to increase the number of students present at any one time in a school, irrespective of any increase in the number of individuals passing through it. This is a factor, however, which is present in the other branches of professional education also. For comparative purposes, the total attendance is more significant than the number of graduates (the only other measure available in published statistics) because of its bearing upon the financial aspects of the institutional mechanism. Owing to the large number of students who attend a law school for only a short time, neither basis provides an accurate measure of the number of individuals who secure their legal education in this manner.

PART IV

RISE OF A NEW LEGAL PROFESSION AFTER THE CIVIL WAR ORGANIZED IN BAR ASSOCIATIONS

CHAPTER XIX

SELECTIVE BAR ASSOCIATIONS

THE creation and permanent establishment of university law schools has already been noted as the most important forward step taken by American legal education prior to the Civil War, and one which went far to offset the demoralization of the bar produced by lowered state requirements. Primitive, judged by modern standards, as were these ante-bellum schools, they represented a type of educational organization capable of infinitely greater development than the apprenticeship system of legal training that they replaced. The period as a whole was one of educational advance.

From a political point of view, also, more can be said than to-day commonly is said in defense of the policy pursued by the states. To-day we can devote our energies to the task of making democracy operate more efficiently, for the reason that the democratic principle itself is secure. The period before 1870, however, was the period during which American democracy, with no foreign model to guide it, was fighting its way into its own. It took the Civil War to prove that government could be strong and yet that the right of every man to participate in it could endure. Until then the failure of French democracy—to-day so magnificently retrieved—was a warning to our popular majorities that superabundant caution must be displayed. Every feature of governmental administration that was not affirmatively democratic came under suspicion on this account. Of this sort were bar admission rules that tended not merely to qualify but also to exclude — whose apparent effect, if not whose deliberate intent, was to make law practice a social monopoly.[1] The right of every man to participate in the making of his own laws is indeed a hollow mockery, if only strangers may participate in the administration and enforcement of these laws. Undemocratic restrictions had to be abolished before extra-democratic regulations (if I may so term them) could be devised—regulations calculated not to

[1] Story, writing in 1817, had referred to "that ascendency in society which distinguishes the profession in this more than in any other country." *Miscellaneous Writings*, 1852, p. 76. For de Tocqueville's well-known characterization of the legal profession in 1835 as "the American aristocracy," see Warren, *History of the American Bar*, p. 512. Compare Harlan F. Stone, "During the early part of the 19th century the bar came nearer to constituting an exclusive privileged class in the new republic than any other group in the community." "The Lawyer and His Neighbors," 4 *Cornell Law Quarterly* (1919), 179.

undermine popular self-government, but to make this type of political organization, in its own interest, more efficient.[1] So here, as in the civil service, the gates of privilege, when they would not open, were battered down, and the way was paved for future progress.

In this second phase of legal education an important part was to be played by the new selective bar associations — city, state and national — that sprang into existence at this time. Organized for professional purposes in general, they early realized their responsibility for professional training in particular. Almost without exception[2] they at once established standing committees on legal education, including admission to the bar. If the organization and accomplishment of these institutions leave, even to the present day, much to be desired, we should recall how recent is their origin. In the case of the bar associations started after the Civil War, as in the case of the law schools started after the War of 1812, it was a great thing for the profession that a new type of institution should be planted throughout the land. In neither case could it be expected to spring full-blown into perfection. The significance of the new bar association movement lay in the fact that it marked the failure of the old attempt to combine into an inclusive professional organization all lawyers practicing at the bar. The attempt was now made to revive the professional ideal through an organization comprising only a minority of lawyers.

The ultimate form which this new professional organization is to assume is still far from having been settled. Three problems in particular have given trouble from the start—the relation, namely, between these new associations and the entire body of lawyers — the relation between the local and the national elements of the new composite organization — the relation, finally, between this practitioners' organization and the schools. These problems are still such strictly contemporaneous subjects of discussion that it will be worth while to trace in some detail the early history of the associations.

[1] One of the ways in which the backwardness of political science, as compared with either ethics or law proper, is displayed, is that it has not coined a word to denote measures that accept the fundamental postulates of democracy and yet in themselves are neither democratic nor undemocratic. Moralists have learned to distinguish between "immoral" and "unmoral" or "amoral;" legalists between "illegal" and "extra-legal," "unconstitutional" and "extra-constitutional;" politicians have usually been too embittered controversialists to stop to devise an appropriate terminology.

[2] For the peculiar situation in Boston, see below, page 235.

1. *Local and State Bar Associations*

Law clubs composed of selected members of the bar, meeting for purposes of social intercourse or mutual improvement, have, of course, existed from the earliest times.[1] Associations existing for the special purpose of maintaining a library were formed in Philadelphia in 1802, and in Boston (the Social Law Library, still operating under its original name) in 1804. As early as 1773, Thomas Jefferson entered into an association to maintain fees at the level permitted by statute.[2] Societies having one or more of these aims became common, and are sometimes difficult to distinguish from the associations of the entire membership of the local bar which dominated New England legal education for a time and still constitute a recognized part of the Connecticut admission system. Associations of students preparing for the bar existed in Philadelphia at an early date, and led up to Peter S. Du Ponceau's Law Academy, designed at its opening in 1821 to be a "national law school" both for students in law offices and for younger members of the bar—an avowed competitor with Harvard, in a city more accessible than Cambridge to the country at large. In 1832, however, the field of legal education was definitely abandoned to the local university, and the Academy was reorganized as a moot court society in which form it still survives.[3] Other important institutions surviving from before the Civil War are the Law Association of Philadelphia, a merger in 1827 of the old Library Company with a younger society formed for disciplinary purposes;[4] the New York Law Institute, formally organized under Kent as president in 1828;[5] and the New Orleans Law Associ-

[1] For an early New York Bar Association (about 1747–70), the Massachusetts "Sodality" (1765) and the New York "Moot" (1770–75), see Warren, *History of the American Bar*, pp. 201–203; and as to the organization first named, compare *Report of the Bar Association of the City of New York*, 1871, p. 12.

[2] *Writings*, ed. P. L. Ford, I, 416.

[3] Sharswood, George, *The Origin, History and Objects of the Law Academy of Philadelphia*, 1883. Klingelsmith, Margaret, *op. cit.*, p. 219. See Appendix, page 432.

[4] "The Associated Members of the Bar of Philadelphia practicing in the Supreme Court of Pennsylvania," organized 1821. In 1830 arrangements were made by which Academy students were privileged to use the Law Association Library. Mitchell, J. T., *Law Association of Philadelphia Centennial Addresses*, 1902, pp. 13–78.

[5] The Institute was incorporated in 1830 "for literary purposes, the cultivation of legal science, the advancement of jurisprudence, the providing of a seminary of learning in the law, and the formation of a law library;" and even before incorporation, efforts were made to deliver lectures. In 1835 a separate moot court and lecture society was organized, which, as in Philadelphia, used the other's library. Patterson, Edward, *Sketch of the N. Y. Law Institute*, (1874); Kent, James, *Address delivered before the Law Association of the City of New York, October 21, 1836*. See page 431.

ation, founded in 1847, merged in 1898 into the present Louisiana Bar Association. Traces have also been found of an early Mississippi Bar Association (1824 or before) and a Massachusetts Bar Association (1849).[1] None of these old institutions exhibited much vigor, however, until after the Civil War a younger generation infused into them a new spirit. Like the law schools, they had been soon overwhelmed by the multiplication of law reports. However broad their charter powers, the maintenance of libraries had come to be their principal function.

The impulse behind the new organization of the profession was primarily ethical. The corruption in national, state and local politics after the Civil War was almost beyond belief. These were the years of Credit Mobilier, carpet-baggery and Tweed. That lawyers and judges contributed their full share to the low tone of public life was early recognized.[2] While the public at large aimed to clean up political life as a whole —organizing citizens' committees and associations of various sorts, and in such matters as civil service reform even getting down to what may fairly be called educational details — the lead in reforming lawyers was assumed by lawyers themselves. A special sense of professional responsibility was aroused among the more respectable practitioners of the day. To regain their lost leadership in public life, selected groups came together "to maintain the honor and dignity of the profession" as their primary object,[3] and incidental to this, to do whatever needed to be done. Educational reform, as already stated, was seen to be among the problems demanding attention. New York City began this new bar association movement in 1870, quickly followed by Cincinnati, Cleveland, St. Louis and Chicago. In 1873 the first of the new State Bar Associations was formed in New Hampshire, in 1875 the first permanent one in Connecticut. By the summer of 1878 eight city and eight state associations had been started in twelve states, all closely modeled upon the Bar Association of the City of New York, though of course not all equally successful.[4] The greater practical difficulties that confront the

[1] Small, A. J., "Historical Sketch," *Proceedings of the Iowa State Bar Association, 1874-1881*, 1912, p. 9.

[2] See above, page 90.

[3] Beginning with the Association of the Bar of the City of New York, this is the first object stated in nearly all the earlier constitutions.

[4]

New York City	1870	Nashville	1875	New York State	1876
Cincinnati	1872	Boston	1877	Illinois	1877
Cleveland	1873	New Hampshire	1873	Maine, by	1877
St. Louis	1874	Iowa	1874	Nebraska, by	1877
Chicago	1874	Connecticut	1875	Wisconsin	1878
Memphis	1875				

organizers of state as compared with city associations led to a less rigorous scrutiny of qualifications for membership in the state associations, especially in the West. Thus the Iowa and Wisconsin associations were organized in response to a call addressed to all the lawyers in the state, in place of the more common procedure of sending an invitation to a selected list. In all cases, however, the selective principle was applied to future admissions, in provisions requiring the assent of members already enrolled.

Thus arose the modern system of a self-constituted, self-perpetuating legal profession organized within the body of lawyers as a whole. The quasi-corporate control once possessed by the lawyers over admission to the entire bar had passed away.[1] In its place arose control over admission to bar associations.[2] It was an act of considerable daring to take a step which, outwardly, was not in harmony with democratic doctrines as currently understood. The New York City association was on the defensive in this respect from the beginning.[3]

2. *Formation and Early Struggles of the American Bar Association*

Meanwhile the American Social Science Association had been organized. This rather typical product of New England reformatory zeal served a useful purpose as a national clearing house for a great variety of projects. Possessing a roving commission to suggest improvements in every department of public life, it conscientiously carried this burden until it was bit by bit relieved. The personal contacts established at its annual meetings facilitated the formation of national associations of narrower scope. It contributed in this way to the birth of such highly dissimilar organizations as, for instance, the National Civil Service Reform Association and the American Bar Association. At its

[1] "When its members were fewer, and a longer probation was required for admission to its ranks, the traditions of the profession served, to some extent, to answer the purpose of a corporate organization. But since 1846 . . . the barriers to admission to the Bar have been substantially removed; the distinctions between attorney, solicitor and counsellor have been obliterated." *Bar Association of the City of New York, Constitution and Address*, 1870.

[2] "I think I can express the idea of this association, and the purpose for which it is to be formed, by saying that we shall aim to make ourselves once more a *profession*." The italics are those of James Emmott, in *Report of Proceedings of the Bar Association of New York*, 1871, p. 17.

[3] See its labored apology to the city bar for having organized itself without consulting the whole body of the profession. *Bar Association of the City of New York, Constitution and Address*, 1870.

Saratoga meetings in 1876 and 1877 the programme included a "Sectional Department of Jurisprudence" at which papers were read by lawyers from several states, in some of which bar associations, old or new, already existed. Several of these gentlemen were subsequently prominent in the organization and early activities of the American Bar Association. In the records of this latter body no credit is given to the earlier reform organization, from whose general spirit the lawyers seemed anxious to disassociate themselves. That we have here, however, a link in the general movement for building up a professional organization of the bar cannot be doubted.[1]

The Connecticut Bar Association suggested the formation of a national bar association in January, 1878. The actual call for its organization, however, as issued in July, represented only the individual authority of fourteen lawyers, from twelve states.[2] In response to this invitation seventy-five gentlemen from twenty-one jurisdictions, out of approximately 60,000 lawyers then practicing in the United States, assembled the following month at Saratoga. Care was taken that uninvited guests should not participate in the organization. A constitution was adopted which added to the three stated objects of the New York City association (upholding the honor of the profession, encouragement of cordial intercourse, promotion of the administration of justice) two further ones: Advancement of the science of jurisprudence[3] and promotion of uniform legislation throughout the Union. The following year saw a total membership of over five hundred, but for some time thereafter the growth of the Association, except as regards the number of jurisdictions represented, was slow. It began the second decade of its existence in 1888 with only seven hundred and fifty members (of whom less than a sixth attended its meeting), and with a record of very slight accomplishment in its chosen field. Even "cordial

[1] Since this section was written, a detailed account of the organization of the American Bar Association by the leading spirit in the movement, Hon. Simeon E. Baldwin, then head of the Yale law school, has been printed in 3 *American Bar Association Journal* (1917), 658. This gives full credit to the American Social Science Association.

[2] These twelve states included the two (New York and Illinois) in which both city and state associations already existed; three of the four in which only city associations had been recently organized (Massachusetts, Ohio, Missouri); one of the six in which only state associations had been organized (Connecticut); six states hitherto unaffected by the modern impulse toward organization (Vermont, Pennsylvania, Virginia, Kentucky, Georgia, Louisiana).

[3] Several of the city or state associations, beginning with the St. Louis Bar Association, 1874, had already made a similar addition to the New York City formula.

intercourse" — that last justification of so many apparently futile bar associations at the present day — had not always characterized its sessions.

The trouble was due in part to the fight over codification that was waged with great bitterness at its meetings of 1885 and 1886, and in part to the manner in which the Association was organized. Although its constitution provided that the President should be changed annually, he was not made a member of the Executive Committee. No provision was made for injecting new blood into this body, on which necessarily fell the burden of managing and practically controlling a geographically scattered membership. There were virtually no changes during the decade in the permanent organization, including chairmanships of other standing committees, and — as frequently occurs when would-be leaders do not receive the recognition they think they deserve—this gave rise to charges of ring rule within the Association.

Furthermore, the relation between this body and the local bar associations had given trouble from the start. In the medical profession this difficulty had been obviated by the federative form of organization adopted at the beginning. The precise steps in the building up of this organization were as follows: In 1806 the New York legislature had created a State Medical Society, composed of delegates from each county medical society then in existence or to be subsequently organized. Two years later this society voted to admit the local medical school (the New York College of Physicians and Surgeons) to membership on an equal footing with county societies. In 1839 the state society had assumed the initiative in building up a national society by this same device of integrating local units into a greater whole, and in 1847 the American Medical Association was finally organized on this basis by two hundred and fifty physicians not representing themselves, but appearing as delegates of over forty medical societies and twenty-eight medical colleges. The permanent organization, formed on the same lines, was not only pleasingly symmetrical; after certain changes, not affecting its relation to the state societies, had been made, it became also admirably efficient in operation. Any differences of opinion between society and society have from the beginning been settled within the profession itself, which thus speaks to the outside world with united authority. When, in 1875, the New York City Bar Association issued its call for the formation of a State Bar Association, the question was discussed

whether the example of the medical profession should not be followed. The fact that no other local association of importance existed, however, coupled with the desire of individuals to secure special professional recognition, made this course impracticable. The New York State Bar Association was accordingly organized independently by an invited group. It seemed even more clearly impracticable to organize a national association out of units most of which did not exist. Furthermore, such an organization would have savored too much of states rights to suit the dominant political theories of the day. A "national" bar, as independent of state bars as the recently triumphant national government was independent of the states, was undoubtedly what the leading lawyers of the North had in mind. Similar considerations help to explain the unsympathetic attitude of the American Bar Association toward state bar associations, even at the present day. Those who criticize its organization on the ground that it divides the forces of the profession should recall the stimulus toward disunion that is produced by our dual system of government. The professional mechanism of lawyers is inevitably influenced by the divisions of our governmental structure to a much greater extent than is that of physicians.

One concession to fraternal feeling the American Bar Association did make. Its first by-laws, adopted in 1879, provided that any state association might send to each annual meeting three delegates with full privileges of membership for the occasion; and the following year any city or county association, where no state association existed, might send two delegates. In spite of the rapid growth of such associations, however, few availed themselves of this privilege, and such delegates as did attend were quite submerged in the mass of regular members. Thus at the important 1886 meeting, only one outside association — the Boston Bar Association — was represented, and of its two delegates one was already a member of the American Bar Association and the other was promptly elected. To the extent that the arrangement possessed any value at all, it tended to enhance rather than to undermine the authority of the permanent members. The Association so closely resembled, in short, a self-perpetuating clique, and there was so little in its record to justify a claim to leadership of the American bar, that in 1887 there was launched a rival organization — the National Bar Association — built on representative lines. The Bar Association of the District of Columbia issued the call. Eight state, eight county, and fourteen city associations, from eighteen jurisdictions in all, took part, through their

delegates, in the convention at which the Association was formally organized the following spring.[1] James A. Broadhead of Missouri, who had been the first president of the American Bar Association, was elected President, and the first annual meeting was held at Cleveland in August of the same year. A few weeks later, at the American Bar Association's meeting at Saratoga, Broadhead asserted that his organization already represented 2000 out of the 10,000 lawyers whom he estimated to be enrolled by this time in local associations. Although he disclaimed any rivalry with the older body, it looked for a moment as though the history of partisan political organization was about to be duplicated in that of the lawyers' machine—as though an association composed, like the extinct Federalist party, of individuals, might succumb to one based, like Jefferson's Republican party, and like both the national parties to-day, upon local units.

The Executive Committee was plainly concerned over the outlook. In 1887 it inaugurated the policy of printing in the Annual Report a List of local associations. In 1888 it was ostentatiously cordial to such delegates as appeared. It even recommended a change in the by-laws whereby any city or county association might be permitted to send two delegates, whether or no a state association existed. The Association as a whole, however, stood firm. Encouraged by a change in the constitution, which ensured a constant infusion of new blood into the Executive Committee by adding the outgoing and incoming Presidents of each year, it declined to extend the representative principle, and undertook instead a more aggressive campaign for membership on the original lines. In 1889 it held its annual meeting for the first time away from Saratoga—in Chicago—where 279 new members were secured, yielding a net gain in membership of 210, as against a net gain of precisely one the year previously. At the same time Broadhead abandoned the National Association, which soon collapsed.[2] Its failure may be as-

[1] Of the eighteen jurisdictions represented, nine were southern and five western. In addition four state, two county and two city associations, from six additional jurisdictions, elected or agreed to elect delegates who did not attend, yielding a nominal total of thirty-eight associations interested.

[2] At none of its annual meetings, held at Cleveland, White Sulphur and Indianapolis, were as many associations represented as at the original convention in Washington. It disappears from the pages of recorded history at a banquet held in 1891 at Washington, where the guests were regaled with the dream that Congress might appropriate funds for a building.

National Bar Association of the United States, Preliminary Statement, 1888: *Proceedings*, 1888, 1889, 1890. See also Miscellaneous Pamphlets in N. Y. Bar Association library.

cribed to two general causes. First, the difficulty of securing financial support from its constituent members when no definite objective was in sight; second, the heterogeneous character of the local organizations. The powerful New York and Boston Bar Associations had turned a cold shoulder to the project from the start. They were quite as exclusive in their spirit as was the American Bar Association. In spite of some friction with this latter over its endorsement of codification[1] they stood by it, in preference to western or southern bodies with which they had little in common.

3. *Principal Elements of Weakness in the Bar Association Movement*

By 1890, accordingly, the professional organization of American lawyers, although not yet extended over the entire country, had become definitely set in the lines of disunion that characterize it to-day. There were to be three tiers of associations. The highest tier in point of dignity and influence through the country at large was to be occupied by the American Bar Association, which already contained members from forty-two of the forty-nine state or territorial jurisdictions into which the continental area of the United States, exclusive of Alaska, was divided. Representation of every state in the Union dates from 1904, when a member was admitted from Nevada. The second tier was to consist of state or territorial associations, of which there were by this time twenty-eight. Wyoming in 1915 completed the full number, excepting only Delaware. The third tier, finally, was to consist of city or county associations of many sorts. It has been reckoned that in 1890 there were 159 of these, in thirty-six jurisdictions, and that in 1916 the number had grown to 623, in forty-one jurisdictions.[2] The progress of the profession toward its now virtually completed triplicate organization in every state may be exhibited as follows:

[1] Compare the following defiance hurled at the American Bar Association by one of its own members: "Those of us in New York who have been in this controversy do not need the interference or the aid of this Association, and I do not think the bar of New York comes here to ask it, and we have nothing to do therefore with it." Austen G. Fox, 9 *Rep. Am. Bar Ass.* (1886) 60.

[2] No city or county organization in 1916, so far as reported, in Louisiana, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Utah, Vermont.

PROGRESSIVE ORGANIZATION OF THE PROFESSION INTO NATIONAL AND STATE AND LOCAL ASSOCIATIONS

	1878	*1890*	*1900*	*1910*	*1916*
Jurisdictions represented in A. B. A.	21	42	45	49	49
Jurisdictions maintaining state associations	8	28	40	46	48
Jurisdictions maintaining local associations	6	36	35	40	41
Total number of bar associations	17	188	298	553	672
Jurisdictions represented in all three types of associations	1	23	30	39	40
Jurisdictions represented in one or two types only	24	22	16	10	9
Jurisdictions not represented in any association	22	4	3	0	0
Total number of jurisdictions	47	49	49	49	49

The later figures, it should be distinctly understood, exaggerate the number of selective bar associations that now exist. They include moribund organizations, library companies and non-selective county associations.[1] Among selective associations, also, the figures inevitably include organizations of every degree of importance, from the magnificently housed Bar Association of the City of New York down to perfunctory collections of periodical banqueters. It would be a hopeless

[1] They have been compiled from the List of Bar Associations published annually in the *Reports of the American Bar Association*, 1887–1911; the List of State Bar Associations which has succeeded this since 1912; and the 1916 Report of the Committee on Professional Ethics (2 *Am. Bar Ass. Journal*, 553). The Delaware State Bar Association, which held no meetings subsequent to its organization in 1901, is omitted. The Bar Association of the District of Columbia is classified as a state association. Several of the local associations carried on these lists, notably in Pennsylvania, are of great antiquity, but are excluded from the 1878 column, for the reason that such activity as they have since displayed seems attributable to the country-wide impulse proceeding from the group of reform associations founded during the seventies. The adoption of a new charter by the Law Association of Philadelphia in 1880 may be taken to mark the transition.

It has been stated that in 1920 there were over 900 local bar associations.

As indicating the difficulty of distinguishing live from dead associations it may be pointed out that from 1901 to 1914, inclusive, an attempt was made to publish in the *Reports of the American Bar Association* a Summary of Proceedings of State Bar Associations. Between 1911 and 1914, 49 of these associations, including those of Delaware and of the District of Columbia, were listed. The number that reported at any time during these four years, however, was 44 (no reports from Arizona, Delaware, Louisiana, New Hampshire, Wyoming). The highest number that reported in any one of these four years was 35 (in 1911). The number that reported in 1912 was 20. The number that reported during each of the four years was only 11 (Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, Mississippi, New Jersey, New York, Ohio, Utah).

task to attempt to catalogue, with any precision, the associations that deserve to be taken seriously. Many of them exert no influence; the more active exert far less influence than they should. Among the many explanations which may be given for this generally recognized fact, the most important one, it is believed, is one that these figures, after all allowance is made for exaggeration, clearly reveal. The impulse toward professional organization has overreached itself, and has given us entirely too many mutually independent and competing associations. The diffusion of professional responsibilities among national, state and local organs has made it no one's especial business to initiate a needed reform. It has made it every one's business to point out defects in such constructive proposals as occasionally are made. The associated lawyers, having no single recognized mouthpiece, would set up a discordant clamor if they really raised their voice. This is one of the reasons why, so often—let it be said without offense—they emit only a gentle buzz, made up in large part of platitudinous generalities.

Efforts to promote coöperation among the different elements of this composite group have been made, but do not reach the root of the evil. The original device of admitting to the regular meetings of the American Bar Association delegates from state associations, or from local associations when no state association existed, proved entirely ineffective,[1] and was abandoned in 1919. In 1916 the plan was accordingly adopted of convening delegates from state and local associations in general, in a special Conference prior to the regular meeting. Whether this innovation will produce any lasting effect other than that of placing still another item upon the Association's already congested annual

[1] COMPARATIVE ATTENDANCE OF DELEGATES FROM STATE AND LOCAL ASSOCIATIONS

	1890	*1900*	*1910*	*1916*
State associations entitled to representation	28	40	46	48
State associations represented at meeting	9	24	28	32
Additional jurisdictions entitled to representation through existing local associations	13	5	1	1
Jurisdictions thus represented	3	3	0	6

The number sending delegates at any time during the four years 1911–14 was 44 (no delegates from Delaware, Florida, New Hampshire, Utah, Wyoming). The number sending delegates in 1914 was 34; in 1912, 21; regularly during each of these four years, 10 (Alabama, Colorado, Mississippi, Missouri, New York, North Carolina, Oklahoma, Pennsylvania, South Dakota, Wisconsin); regularly during each of the six years, 1911–16, only 5 (Colorado, Mississippi, Missouri, North Carolina, Pennsylvania). Compare preceding note as to associations that regularly reported their proceedings.

programme cannot, at present, with any confidence be foretold.[1] The Association refused to adopt the recommendation of the first Conference that hereafter every applicant for membership, if not for twenty years a member of the bar, must be a member of a recognized state bar association. In place of this step toward a genuine integration of the profession, state bar association presidents were made *ex officio* members of the standing committee on nominations for office, and state bar association secretaries were added to the membership committees for each state. In 1919 even these provisions were dropped. In its relation to other bar associations the national organization remains, therefore, only *primus inter pares*. No more at present than in the past can it speak with the authority that would belong to an organization that represented the entire group of selective associations.

This, then, is the first and most important characteristic of the newly organized legal profession that has grown up since the Civil War, and the characteristic that especially distinguishes it from the older medical organization — the fact that it is a loose conglomerate rather than an integration of local, state and national units. Out of the wreckage of attorneys admitted to the bar, under the liberal admission rules prevailing in all the states, something resembling a genuine legal profession, based upon the selective principle, has indeed emerged. But it is a profession so disunited within itself as seriously to impair its capacity even to formulate — let alone to realize — professional ideals.

A second continuing characteristic of the new profession has been the small proportion of practitioners that belong to it. As late as 1910 the American Bar Association included only three per cent of the total number of lawyers in the United States, as compared with over twenty per cent of physicians then paying dues to the American Medical Association. Since then there has been a great increase, due largely to the efforts of a new membership committee appointed in 1912 and supported by liberal appropriations. Yet even to-day the membership is only about nine per cent of the total number of lawyers.

[1] More than 200 delegates, representing 45 states and 76 local bar associations, were expected at the first conference. The actual attendance at each successive conference, omitting delegates representing outlying possessions, Canada and the American Bar Association itself, has been as follows:

	1916	*1917*	*1918*	*1919*	*1920*
State bar associations represented	32	35	29	40	35
City or county bar associations represented	19	30	43	44	32
Total number of delegates	71	116	112	134	94

TABLE SHOWING GROWTH OF AMERICAN BAR ASSOCIATION

	1880	*1890*	*1900*	*1910*	*1920*
Number of lawyers in the United States	64,137	89,630	114,460	122,149	130,000[1]
Members of American Bar Association	552	943	1,540	3,690	11,941[2]
Per cent	*0.9*	*1.1*	*1.3*	*3.0*	*9.2*

The aggregate membership of all State Bar Associations has recently been reckoned as about 25,000, or 20 per cent of the total number of lawyers.[3] The policies and functions of local associations vary so greatly that it is impossible to quote aggregate figures for these.[4] Allowing for duplications, between 25 per cent and 30 per cent would be a reasonable estimate of the proportion of lawyers now enrolled in any part of the entire three-storied structure of selective associations.

If this feature of the bar association movement were the outcome of a defensible principle of selection, consistently applied—if it were consequently recognized as a merit rather than as a defect that a carefully chosen minority of high class lawyers should be distinguished from the entire body of attorneys admitted to the bar—if, having been thus set apart in professional organizations of their own, this minority thereupon scrupulously discharged the responsibilities proper to their position, and never, on the one hand, immersed themselves entirely in their private practice, nor, on the other hand, arrogated to themselves authority justified neither by the basis of their selection nor by their numerical importance—then there would be nothing out of the way in the figures quoted. When lawyers are contrasted unfavorably with physicians as regards the relative strength of their professional organ-

[1] Estimated. U. S. Census figures, used in the absence of more reliable authorities for preceding years, have not been published for 1920. At the annual meeting the total number of lawyers, listed by jurisdictions, was stated by a member to be 127,028, of whom 11,294, or 8.9 per cent, were, at the time the list was compiled, members of the Association. 43 *Rep. Am. Bar Ass.* (1920) 26.

[2] In 1916, 10,636.

[3] 1 *Am. Bar Ass. Journal* (October, 1915), 566. This figure compared with nearly 80,000 physicians, or approximately 50 per cent of the total number, members of State Medical Associations. All members of State Medical Associations are technically members also of the American Medical Association, and over half now pay dues to it. See below, page 233, note.

[4] The call for the organization of the original New York City Bar Association was signed by 231 out of approximately 4000 city lawyers. The membership numbered in 1872, 600 (15 per cent); in 1910, 2056 (29 per cent of the number in the old city, 19 per cent of the number in Greater New York); in 1920, 2333.

izations, it is forgotten that the medical craft includes much more than the physicians and surgeons now so largely represented in the American Medical Association. It includes also pharmacists, nurses, midwives, to say nothing of the specialized practice of dentists and veterinaries. The long process of historical development whereby the original apothecary and the original barber were transformed into the many branches of the healing and surgical arts that now exist, is only beginning in the case of the American attorney and counsellor-at-law. It is inevitably attended by the setting off of the specially trained, or the better trained, or both, into minority associations.

Unfortunately, the significance of the process has not always been clearly understood either by those without or by those within the bar associations. To non-members, the animating spirit of a membership committee has sometimes seemed to be one of narrow exclusiveness, based upon considerations of caste or wealth or age or race; while as for the associations themselves, doubtless some have really allowed such considerations to influence their policy. Others have not been at sufficient pains to dispel an impression of favoritism that is easily produced, when the fate of applicants is determined by a star chamber. Still others, restive under this imputation, or over-anxious for mere numerical growth, have not adopted the remedy of enunciating rigorous objective standards of membership under which applicants may qualify. Instead, like many colleges and law schools, they have let their entrance barriers down. They have organized campaigns to drag in all the new members they can find. Like the colleges and the law schools, they have honestly thought it "democratic" to prefer quantity to quality. While the mechanism of formal election to membership has been retained, the actual standard of admission has been debased to little more than willingness to pay the dues of the association. When election is easy, and accomplishment small, the busy and successful practitioner may well question whether it is either a personal advantage or a public duty to join, or whether he would not thereby be merely playing into the hands of the schemers for petty notoriety who inevitably play a considerable part in all professional organizations. In short, if the membership policy of a bar association does not cause an excluded applicant to feel resentment at not being considered "good enough" to belong, the non-member is likely to feel that the association is not "good enough" to belong to; or if, as the result of a vigorous campaign, he is induced to

lend his name and pay his dues, he still will not waste his valuable time by taking part in its activities.[1]

Thus as a result of the imperfect application, or even the virtual surrender, of the selective principle, the newly organized profession ranges in its membership all the way from groups that are suspected of undemocratic exclusiveness down to aggregations that cannot be distinguished, to their advantage, from the mass of attorneys whom they profess to illuminate and lead. Not being able to justify their claim to leadership on the sure ground of superior training, their occasional recommendations—even when not mutually conflicting—lack the weight which a proper insistence upon educational qualifications in their own membership would supply. Put forward as the authoritative judgment of the profession, they are rightly regarded by our lawmakers merely as suggestions emanating from small and not remarkably important groups of practitioners.

A final general characteristic of these associations has been their lack of organic connection with the schools—unless we count as organic connection the custom, inaugurated by the New York City association in 1871, of choosing heads of prominent law schools (in this instance Dwight of Columbia) as chairmen of their committees on legal education. The story of how, many years later, as part of the elaboration of the American Bar Association's activities, efforts were made to establish a better connection, and how the attempt resulted only in widening the gap between the organized practitioners and an important group of schoolmen, organized in the Association of American Law Schools, is too much a story of contemporary detail to be discussed in the present Bulletin. It need here only be pointed out that the original failure to adopt the delegate form of organization made it impossible to give to law schools the same sort of representation that the Medical Association had accorded to medical schools; and that the organic hiatus has been the more unfortunate for the reason that, on the side of personnel, the accepted identity between the medical school graduate (the M.D.) and the educated physician was in no wise duplicated in the early legal profession. The leaders of the medical profession were

[1] The attendance at the annual meetings of the American Bar Association in 1880 was 17 per cent of the total membership; in 1890, 14 per cent; in 1900, 15 per cent; in 1910, 9 per cent; in 1919, 8 per cent. The highest percentage of attendance since 1910 was at the Boston meeting of 1911 and the Montreal meeting of 1913: 13 per cent. At meetings of the New York City Bar Association an attendance as high as 15 per cent is considered remarkable.

themselves schoolmen. The leaders of the early legal profession in the majority of instances were not.[1] Although since then law school education, as a preparation for practice, has become usual, it still is far from possessing the sanction that the medical school enjoys, in the way of either popular, or legal, or professional recognition. The public regards the LL.B. as only an empty academic distinction. No state requires law school training for admission to its legally privileged bar. No bar association, finally, imposes any such qualification upon those admitted to its own inner professional circle. Notably in this last respect the law school stands at least a generation behind the medical school. The legal profession, as organized in bar associations, has not yet come to the point of insisting that training in any sort of law school must be secured, at a time when the medical profession has progressed far beyond this stage, and is energetically distinguishing between good and bad schools of medicine.

Now, there can be little question but that the recent rank growth of law schools needs to be weeded out by the profession, through action similar in some ways to that which has already been taken in the medical field.[2] But practitioners, themselves the product of every variety of institutional training, or of none, cannot easily agree which are the schools that produce valuable crops and which are the tares. Let one illustration suffice. In so far as a prevailing opinion as to the distinction between good and bad education may be said to exist, practitioners naturally tend to emphasize the importance of practical training. They are predisposed to stigmatize as theorists those law teachers who are not in active practice, or who do not attempt to conduct ambitious "practice" work; or if they recognize that adequate practical training cannot be given within academic walls, they are apt to feel that the education that can be given there should be supplemented by adequate practical training elsewhere. They come thus into conflict with a group of scholars who feel that in the law, as it is actually administered by present-day practitioners and judges, technique counts for vastly more than it should. Such men have made it their mission not to perpetuate this evil by increasing the ranks of the mere technicians, but to remedy it by sending out graduates with a broader conception of the

[1] Of the dozen presidents elected by the American Bar Association prior to 1890, only three had a law school training. Many present-day practitioners and judges have attained professional distinction without this advantage.

[2] See above, page 193.

law. They are jealous of any attempt to preëmpt the student's time with matters that they deem of subordinate importance. Discussion between this group of teachers and general practitioners, as to the precise objects for which additional time is needed, prevents the student from devoting sufficient time to any part of his education.[1]

It may be that each party underestimates the merit of the other's position. It may be that neither sees with sufficient clearness the necessity of diversification of crops in the law school field — of cultivating, by methods appropriate to each, both wheat and oats, rather than simply grain in general. Each may too hastily have taken it for granted that there must be a substantial identity of purpose and of structure among all law schools worthy of the name. Evidence of superiority or of inferiority is seen in what may be the marks of generic difference only. Considerations such as these are particularly applicable to the vexed question of night law schools. Whatever may be the correct attitude as to this and as to other problems that profoundly affect the law schools, and therefore our entire system of legal education and admission to the bar, it is certain that these matters cannot be settled by associations whose authority to settle them is not recognized by the law schools themselves. For although the schools, in the aggregate, constitute as much of a hodge-podge as the existing membership of bar associations does, individually they are often more firmly established and enjoy greater prestige, both with the public and with influential practitioners.

The establishment, accordingly, of organized bodies of practitioners, independent of the already existing organization of law teachers in their several schools, has brought it about that legal education must now reckon with two types of institutional forces whose points of view inevitably diverge. Since no means of reconciling these two forces has yet been discovered, a confusion of counsel (or, more commonly, a prudent withholding of counsel) leaves those responsible for the improvement of legal education uncertain what they ought to do. Individual schools and bar associations, bar examiners, courts, legislatures, and the public at large, all hesitate to act, for lack of a central organization competent to thresh out the many disputable points involved in the formulation of a consistent programme.

[1] So, quite recently, the extension of the period of training to four years, generally recognized as desirable both by practitioners and by schoolmen, has been delayed by disagreement as to whether the fourth year had best be spent in an office or in a law school.

4. *Valuable Services rendered by the New Profession*

Still other organic weaknesses in the new profession made their influence felt at a later date.[1] The three defects already mentioned, however — the division of the profession, namely, into mutually independent groups — the absence of any clearly defensible basis for the claim of these small minorities to represent or to lead the practitioners outside — the lack of satisfactory contact between the associated practitioners and the teachers organized in their schools — have been continuously operating and are so glaring that they raise the question by what warrant we term this loose conglomerate "a" professional organization at all. Have we not here merely a miscellaneous collection of self-constituted groups, all more or less at odds with one another and with the practitioners and schools outside? Our justification for seeing in it more than this is that, as events were to prove, the spirit of comity among lawyers did, after all, provide a bond and a sanction. There was really a vague unity about the system and a shadowy authority about its decrees. The group of selective bar associations has come, as a matter of fact, to constitute "a" professional organization, though a shockingly inefficient one. In spite of the fact that its essential characteristics of separatism and arbitrary membership standards have never been changed, it has given to an otherwise disorganized mass of practitioners the only leadership they possess — one whose commands are at least listened to, even if they are not always followed. It is true that the American Bar Association often expresses itself as favoring a certain reform, and then nothing occurs. It is true that a state bar association often recommends a definite legislative measure, and the legislature treats the recommendation with scant respect. But, on the other hand, it is also true that a state association rarely if ever opposes a policy on which the American Association has taken a decided stand. It is true that in the particular field of legal education, as a preliminary to any action by the legislature or by courts, it has come more and more to be part of the normal process of reform that the endorsement of a bar association must first be secured. One has only to note the sequence of bar association agitation and of improved standards of bar admission, in almost any state since the Civil War, in order to appreciate both how dilatory and how indispensable is this now consecrated mode of procedure.

[1] Notably an unfortunate division of responsibility, finally remedied in 1919, between the Committee on Legal Education and the Section of Legal Education of the American Bar Association.

A real force for betterment the new invention has accordingly proved to be; one to be applauded for accomplishing something, rather than to be condemned for not doing more. In appraising its work, moreover, it is only fair to realize that the task of "maintaining the honor and dignity of the profession"—in plain English, making lawyers respected and respectable—is a large one, in which much besides education is involved. There are two lines of bar association activity, in particular, concerning which a word should be said, both because of their importance in diverting the attention of members from legal education and because they suggest a distinction—not yet sharply defined but already recognizable—between the functions appropriate to state and national associations on the one hand, and to purely local associations on the other.

In the first place, among the responsibilities of the profession is that for the condition of the law itself. For some of the changes needed in order to reduce contradictory precedents and slovenly statutes into something resembling common sense, action by the schools must be awaited. But there is a good deal, especially in the field of procedure and removal of accidental variations in commercial law, that can and ought to be done at once to stir up courts and legislatures. To this task the associations have addressed themselves, and with fair success. There has been much discussion, and some accomplishment. The time that was thus spent, however, in the New York City association, for instance, in discussing the Code of Civil Procedure, or that was later spent in the American Bar Association in discussing codification in the abstract, necessarily delayed action in regard to other matters equally important in their way. In this department of their activities the associations are virtually legislative bodies for the bar, and, as in other legislatures, their calendars are crowded. This crowding is especially apt to occur in the case of state and national associations, which meet only once a year. For obvious reasons, however, it is here, rather than in local associations, that reforms of state-wide interest are most appropriately pushed. Forums of discussion, therefore, wherein the opinion of the bar is slowly crystallized, is what such associations tend to become; or, failing this, "encouragement of cordial intercourse" among a geographically scattered membership has a professional value that serious-minded souls should not despise.[1] But what with banquet and debate, the

[1] In the genial language of Attorney-General Harmon, a quarter of a century ago, the American Bar Association offers to the inadequately trained, "facilities, including eating, for further legal education." 19 *Rep. Am. Bar Ass.* (1896) 449.

recommendations of the educational committee often receive scant attention.

A second divergent line of bar association activity has been the effort to restore, by other than educational means, ethical standards to the profession. Here, as in the case of law reform, the work of the bar associations constitutes a necessary supplement to the work of the law schools. The activities of the schools are fundamentally the more important. For although it is of course true that morality among lawyers is more important than mere expertness or erudition, which may be combined with an utter absence of high ideals, it is equally true that a proper system of education is needed in order to secure either end. It is only through agencies that come in contact with prospective lawyers during their formative years that the character of lawyers can be profoundly affected, and a genuine moral sentiment diffused in the profession. So frail is human nature, however, that the products even of the best system of education sometimes go astray. Complete reliance cannot be placed upon the inner worth of a practitioner as developed in the school. A check upon his conduct in actual practice is also required. This check is still more clearly indispensable when even his education has been defective. The building up of some system of external rewards and punishments to accomplish this result is peculiarly the function of the profession itself, and is not, like education, a responsibility that it shares with the law schools.

Properly, therefore, though again somewhat at the expense of educational progress, the bar associations have from the beginning devoted a considerable portion of their energies to this phase of the ethical problem. Their activities have assumed two main forms, usually appearing together. In the first place, with reference to themselves, the associations have been fairly careful not to admit to membership, or to retain in membership, the less worthy practitioners. They have tried to establish the tradition that inclusion among their members is in some degree a sign of merit worth a young man's while to deserve. In the second place, they have quite often taken it upon themselves to act as watchdogs and leaders of the lawyers outside. Through their grievance committees they have exposed and prosecuted the more heinous offenders, and have secured their disbarment by the courts.[1] They have

[1] The Chicago and Boston bar associations recognized from the beginning their responsibility to act as censors of non-members. The New York City association did not thus extend the jurisdiction of its Grievance Committee until 1884; the Illinois State Bar Association not until 1888; the New York State Bar Association not until 1918.

advocated legislation to aid them in purifying the profession. They have themselves promulgated codes of professional ethics.[1] They have been charged sometimes with being a little too hard on the poor devils outside, and a little too lenient with sinners in the fold whose nefarious operations, especially in some of the insidious ramifications of corporate graft, have done far more to debauch the community. The charge is in some cases a mere expression of social jealousy, to which I shall have occasion in the next chapter to recur. Whether, in other cases, it may be well founded does not fall within the province of an educational enquiry to decide. The bar associations, if they have not done all that they might have done to elevate the moral standards of the lawyers, have at least done a good deal. They constitute one of the forces that have made our public life cleaner than it was when they started. Naturally, local associations have accomplished more in this field than state associations, both because it is in the large cities that the ethical problem is most acute, and because the evil is one that demands administrative investigation rather than legislative manifestos. When local associations are not active in this way, their ability to maintain law libraries is what keeps them alive. In one or both of these ways they serve so creditably other professional needs that their failure fully to utilize their opportunities in behalf of legal education, though unfortunate, is not surprising.[2]

[1] First in Alabama, in 1887. The American Bar Association adopted Canons of Ethics in 1908. Note also the activities of the Committee on Professional Ethics of the New York County Lawyers' Association, in systematically answering questions respecting proper professional conduct.

[2] It is not forgotten that the maintenance of a good collection of law books is itself an important educational function. The debt which the present writer owes to the Association of the Bar of the City of New York for granting him access, at the request of the Foundation, to its complete and admirably administered library is one that he can never sufficiently acknowledge.

CHAPTER XX

THE PROBLEM OF PROFESSIONAL ORGANIZATION

WHEN all allowances are made, however, the accomplishment of our existing bar associations seems slight, for a period covering fifty years. Their records teem with evidences of earnest effort and with regrets that it has all been to little avail. The conclusion is gradually forcing itself upon the profession that there is something wrong with a machine, the operating efficiency of which is so low. The output of finished product is unduly small in proportion to the individual energy that is required to produce it. The concrete efforts that have been made to remedy this evil are too intertwined with strictly current controversy to be appropriately recounted here. Among the features of the present system of professional organization that have come up for discussion, however, are those three that have been emphasized in the preceding chapter as its principal defects. Although the particular way in which the profession shall be reorganized is properly a matter for the lawyers themselves to decide, so much of the future development of legal education depends upon having these three points settled right that some further discussion of the principles involved, from a viewpoint not affected by institutional pride, may be hazarded in the hope of bringing discordant elements together.

1. *The Basis of Professional Selection*

First, as to the delicate question of exclusiveness or inclusiveness; the relation, that is to say, that should obtain between the profession, as organized in bar associations, and the entire body of practicing lawyers. The charge that is sometimes brought against some of these associations, both by those without and those within the pale, is that, by avowedly aiming to include only a selected group of high-class lawyers, as to whose eligibility they are themselves the final judge, they violate all democratic principles. "Self-constituted and self-perpetuating oligarchies" is the slogan of attack, which may be directed either against the selective principle itself, or against its application. In so far as the principle itself is attacked, the charge is clearly untenable and is based on a false conception of what democracy itself demands. Free voluntary associations of self-selected individuals, endeavoring to

secure general action in furtherance of their particular views, are of the very essence of democracy. Proposals, under any system of government, must originate with the few; it is only choice or ratification that can be exercised by a democratic majority. The existing relation of bar associations to the community at large affords, indeed, a perfect example of the way in which a typical democracy operates. Such authority as these associations possess is a purely moral one. When they recommend action the general principle of which is approved, their lead is followed in respect both to the general principle and the subordinate detail. We have seen that they deserve credit for having thus initiated and formulated a considerable number of reformatory measures which without their leadership would not have been put into effect. If, on the other hand, they recommend action suggested by that narrowness of outlook which a too limited circle of personal contacts is apt to breed, then still no positive harm is done, because in this case nobody pays any attention to them. They cannot under any circumstances constitute a danger to democracy. Quite the contrary, democracy would be in a bad way if the fullest freedom of association and initiative were not allowed, in time of peace, to any and all groups of individuals.

It is one thing, however, to recognize that the existing legal profession is privileged to determine its membership in any way it sees fit. It is quite another thing to enquire whether, with due regard to the influence which it aspires to exercise in the state, it determines its membership in the wisest manner. The importance of the policy it adopts in this respect is concealed in the immediate present by the fact that rival self-appointed groups, possessing a colorable claim to lead, cannot be organized over night among a large mass of individuals. Up to a certain point, therefore, existing bar associations may fail to rise to the full measure of their opportunities, and the only result will be that nothing whatever will occur. They will remain the only leaders the practitioners possess, even though they lead to nothing. There will always be an element in the community that will justify precisely this result, and find it the especial merit of the present system of bar associations that it has prevented more than it has accomplished. History seems to teach, however, that eras of conservatism, when the advocates of progress are daunted by the mechanical difficulties in their way, are followed by periods of somewhat rapid change. A younger generation sweeps mere obstructionists to one side and, if it finds the existing machinery inadequate, devises some that works better. Our bar associa-

tions are not under violent attack to-day, because there is for the moment little general interest in legal reform either within or without the profession. On the one hand, these associations are not vigorously fostering action that large sections of the public oppose. On the other hand, they are not blocking action vehemently desired by important portions of the community. But are they doing all that they ought to be doing even to-day? And in the future, when there occurs one of our periodical popular outbursts against law and lawyers, will it find these associations able to guide the agitation along sane lines? Are they so constituted as to be capable of exercising leadership in a democracy that is determined to advance, or is such negative influence as they now exert a mere reflex of present-day apathy? They cannot work positive harm. They can keep some positive harm from being done to-day. But are they really accomplishing much positive good? Will they be able even to prevent positive harm in the future?

If it is their ambition to play a leading part in a democracy organized for effective action, they will have to avoid two quite different evils. On the one hand, in the interests of their own capacity to initiate, there must be no hesitation in fearlessly applying the selective principle. They must not be a heterogeneous collection of individuals incapable of uniting on a definite forward policy. On the other hand, if they hope to win popular support, they must not appear to represent a class or clique, and so discredit in advance any policy upon which they do unite. The ruling populace is suspicious of elements that are not in touch with itself. In political life proper, the competition for leadership between two party organizations, each possessing a consecrated and, as it were, a common-law right to try to lead, tends to keep both of them fairly responsive to the wishes of the unorganized mass of voters outside. Yet even here it has been thought necessary to try experiments designed to diminish the power of rings and bosses.

The weakness of the profession as at present organized is clearly in part attributable to both these causes. Some bar associations exhibit the one defect, some the other. Members of a state bar association, operating in any case under the disadvantages of a congested calendar, often have not enough in common with one another to enable them to join in pushing a reform. Local associations may possess the necessary solidarity of sentiment and *esprit de corps*, but do so at the expense of popular appeal. "High-toned" organizations are sufficiently unpopular when the tone is supposed to be an ethical one. If in addi-

tion social and even racial discrimination can be imputed to the membership committee, their political usefulness is ended. That blend of qualities which enter into the Anglo-Saxon concept of a "gentleman" is a very precious heritage for an individual to possess; but anything that looks like a claim on the part of the well-bred to constitute a separate interest in the state provokes violent opposition from a still sensitive democracy It is not here asserted that any city bar association is being run on the lines of a social club. It is asserted that some city bar associations appear to be so run. If they are content with being only dignified, the suspicion may be ignored; but if they aspire to be permanently influential, care should be taken not to arouse the bitterness of an excluded class. No American citizen of sound professional training and good repute should be given even an excuse for asserting, on however insufficient grounds, that neither he, nor his son, nor his son's son can ever hope to be one of the inner circle of lawyers.

In avoiding this second evil, however, we must be careful not to fall into the first. The solution of the membership problem does not lie in ignoring distinctions which, whether we like it or not, divide practitioners into different types, and are far stronger than the bond of being a "lawyer." It consists rather in discriminating even more carefully than at present between these different types, but discriminating between them on grounds that can be avowed as distinguishing not the good lawyer from the bad, but the true professional from the practical craftsman. Between the product of a strong university law school, resting upon a certain amount of liberal education, and a young man who has secured just enough training to be admitted to the bar, there is a gulf, which their subsequent experience in practice is more likely to widen than to bridge. To expect individuals so different from one another to be able to coöperate, on an equal footing, in a professional way is to expect what, except in the rarest instances, never can be and never ought to be, so long as we look to education to mould character. The comparatively untrained man may be equally worthy, and in his own line of work equally competent. But if the one who has enjoyed the greater opportunities has not in many ways grown apart from the other, and if, in particular, he is not the better qualified to discharge professional responsibilities in the spirit of *noblesse oblige*, then American higher education is indeed a failure. The truly democratic attitude for the bar associations to adopt would be to recognize that the community needs a greater variety of legal practitioners than can be made

to cohere into a single professional class; and the truly democratic method of selecting the members of such a class out of the wider practitioner group would be for the associations to require stiff educational qualifications for admission into their own number.

When these associations were first organized out of lawyers of all ages and all sorts, moral qualifications only were sought. No one can tell, however, whether a young man just admitted to practice is virtuous or not. Either he must be refused admission until he has had time to establish a record — in which case the association lacks the invigorating influence of youth; or he may be admitted on the ground that there is nothing against him — in which case the pretended qualification disappears; or, finally, preferential treatment may be accorded to a young man whose connections are good — in which case favoritism is charged by the disappointed. The American Bar Association, by limiting membership to practitioners in good standing for five years, chose the first of these three courses.[1] Most other associations chose one of the other two. Given the condition of legal education at the time, it is difficult to see how any other course could have been followed. But in proportion as the educational tangle may become unsnarled, to that extent it may become possible to advance the new profession from a vague moral basis to a definite educational one. If an association should think it desirable to demand for admission to its membership, in the case of younger practitioners, attainments decidedly higher, as respects both general and technical education, than those required by the state for admission to the general bar, and should admit virtually as of right young men so qualified, the system would operate more as an incentive and less as a barrier. Those law schools and those practitioners that cherish genuine professional ideals could fortify one another in this way. The door of opportunity would still open with greater ease to some young men than to others, but to none would it be definitely closed. An irregular education would not, of course, preclude the admission of older practitioners, on the basis of distinguished careers at the bar; membership secured on these grounds would constitute a real professional tribute to their ability. A profession, the bulk of whose membership was thus united by a background of similar educational experience, would be far more cohesive, far more

[1] The constitutions of the Connecticut and New York State associations had already required three years in good standing. In 1917 the American Bar Association lowered its requirement to the same figure.

able to act as a vigorous unit, than it is to-day. And if in the process of passing through the colleges and the law schools, a student, of whatever origin, did not absorb, in addition to his formal education, the essential characteristics of an American gentleman as well—characteristics which association with other gentlemen, after graduation, would foster and maintain — it would seem as though a grievance committee, with a reputation for holding its fellow members to higher standards of conduct than would be permissible outside, would constitute a sufficient corrective and would provide a highly appropriate means of maintaining the "honor and dignity of the profession."[1]

The constitution of the inner bar upon this defensible basis would incidentally be an incentive to the excluded practitioners to free themselves also from suspicion of moral or educational taint. As in the case of English solicitors, an independent organization charged with responsibility for them would doubtless arise. Since, moreover, existing bar associations vary greatly in their membership policy, it is highly probable that some of them will prefer to remain associations of a relatively inclusive type. It may be that out of these elements this second organization will be in time compounded. It would be futile, however, to attempt to forecast the precise line of development, or to lay down in any detail an ideal plan. The suggestion here put forward is merely that those bar associations which do honestly believe in the selective principle might well cease to apply it in the somewhat shamefaced and *sub rosa* manner that too frequently characterizes its operation to-day. Instead of fruitlessly pleading with courts and legislatures to raise requirements for admission to the bar in general, they might better turn their attention to that inner circle of the bar which they themselves already represent and control. If their own by-laws set up definite educational standards, to which younger applicants for admission must conform, there is ground for hoping that the leadership, which their selected membership has already been permitted to exercise in some degree, would constitute an increasingly important factor in our legal development.

[1] The engineering associations, whose relation to engineering practitioners offers an analogy to our subject far closer than any presented by medical education, have already begun to discuss the propriety of requiring scholastic standards for admission to their membership.

2. *Union of Bar Associations*

If this much is accepted, then the second question which agitates the profession to-day—the question of separatism *versus* unity—whether state or local associations should be independent of the national association or should form constituent parts—seems comparatively simple. There can no longer be any real doubt that the American Bar Association is destined to survive, and that its pronouncements will continue to carry weight with state and local associations. Whether such associations remain loosely affiliated with it, under the recently introduced system of a Conference of Delegates meeting as one of its numerous Sections, or whether those associations in which the professional spirit is equally strong are made component parts, does not alter the essential fact that the American Bar Association already heads a lawyers' machine that is here to stay. The change that would be effected, if it were to break off all relations with associations that are not in sympathy with its fundamental aims and establish an intimate organic relation with those that are, would be merely the change of a machine that works badly into one that works well. There is not the slightest danger that—as has sometimes been charged against the medical profession—the lawyers' machine may function too efficiently for the common good. Concerned as it is with the protection of private rights, it will always find public opinion on the alert. Its functions, in a broad sense, are political; and in politics no one can domineer. Like the strictly partisan organizations when they propound their solutions for the problems of the day, it will be obliged, in order to exert any real influence, to move along with the great stream of democratic thought. The people will follow its lead only if they are convinced that it is heading in the right direction. The danger is not that it will lead us astray, but that it will not lead us anywhere at all; that in a country guided by propaganda of every sort there will be none devoted to the advancement of justice.

What does an engineer do when he finds that he has a noisy jangling machine, with a low operating efficiency? Does he not endeavor to repair some of the parts—scrap and replace those that are beyond repair—finally tighten up and adjust the whole so that there will be as little as possible of that form of waste technically known as "lost motion"? A similar treatment accorded to the loosely connected bar associations might be expected to yield results comparable to those that have been obtained in two other fields of organized activity. Our national political parties in their compounded organizations have found a means whereby

the local units may serve local ends and at the same time add greatly to the efficiency of the organization as a whole. Professional medicine is organized in a similar way and with similar success. Lawyers possess elements in common with both of these groups. They exercise distinctly political functions. They also constitute, equally with physicians, one of the traditional learned professions. There may still be some reason, not clear to one who stands on the outside, why state and local bar associations, genuinely selective in character, should not constitute the "portal of entrance"[1] to the American Bar Association, but the experience of these other organizations at least merits careful consideration.[2]

3. *Relations between the Professional Organizations and the Law Schools*

In regard to the third point under discussion—the proper organic relation of the schools to the practitioners' association—the lesson of experience is not so clear. Nothing is to be learned here from partisan politics, the training for which is still in the apprenticeship stage of educational development. Efforts made by Columbia as early as 1880[3] to establish a school of practical training for public life merely served to reveal how far distant we are from being able to place governmental administration (outside of private law practice) on an institutional basis. Civil-service cram schools, which spring up wherever an examination for minor administrative positions is required, have nothing in common with professional higher education.

Turning to medicine, we find that here the original device of permitting every regularly organized medical college to send two delegates to the American Medical Association did not work well. It was abused by the representatives of the inferior schools, who were enabled thereby to prevent the association from taking any vigorous steps to elevate educational standards. In the early seventies all school and hospital delegates were accordingly thrown out, but still no substantial general ad-

[1] This metaphor, rather than the mechanical one, is the one preferred by medical men to describe their organization—except when they are attacking it.

[2] Under the present régime of competing associations, growth is largely dependent upon systematic membership drives. An association that has been thus reduced to importuning reputable practitioners to come in will not be sympathetic with any reform that makes this task harder. This was the ground of the objections voiced at the 1916 meeting of the American Bar Association to the proposal of the Conference of Bar Association Delegates (see page 215) to limit membership, in general, to members of recognized state bar associations. 41 *Rep. Am. Bar Ass.* 10–18.

[3] See below, pages 334–335.

vance was made until after the Association of American Medical Colleges was organized in 1890, on the initiative of six Baltimore faculties. The dominant position secured by the practitioners' association, which has been criticized as being too absolute, is directly traceable to these causes: first, the establishment in 1885 of an organ of publicity, the Journal of the American Medical Association; second, the financial resources derived from this and from a paying membership numbering today between 40,000 and 50,000; third, constitutional reforms effected in 1901 whereby the government of this large membership was vested, as always, in delegates chosen by the constituent associations, but the numerical basis of representation was changed so as to reduce this body to workable dimensions.[1] This made possible the transformation of the annually appointed Committee on Medical Education into a permanent board, with compensated executive officers—the so-called Council on Medical Education, which summoned representatives of medical schools, state licensing boards and universities into conference, and rendered its first report in 1905. The final result of their activities has been to produce the present highly centralized organization of medical education, which may be described with substantial accuracy as follows: an element in sympathy with a few of the more advanced schools leads the Council; the Council leads the Association and through it all other factors involved in the problem, including the public at large. Public opinion is not sensitive to charges that the situation is inherently undemocratic, nor even to the suggestion emanating from an official of the Association that legislation goes too far when it establishes an absolute monopoly, and prevents a patient from being treated, if he wishes to be, by an irregular practitioner.[2] In spite of occasional friction caused by the demand of medical sects to secure similar protection under

[1] Under the original constitution, whereby all local associations were entitled to one representative for every ten members or a major fraction, the governing body would now number approximately 8000. Under the new constitution the House of Delegates is limited to a total of 150, apportioned among the constituent state or territorial associations in proportion to their active membership. This compact body is the real successor of the original American Medical Association. The large "membership" of over 80,000, in the present American Medical Association, is merely the former aggregate of state associations, appearing under a new name. Such of these *ex officio* members as pay dues are termed "fellows," and acquire thereby the right to receive the *Journal of the American Medical Association*, to take part in an annual "Scientific Assembly," and to be elected to the governing House of Delegates; the number of these fellows, in 1920, was over 40,000.

[2] See Simmons, George H., *What the American Medical Association Stands For*; address delivered before the Kentucky State Medical Association, 1907.

the laws, the people are on the whole content to let doctors be as undemocratic as they please, provided they are both expert and human in their practice.

The fundamental conditions under which legal education operates differ radically from the above in at least two respects. Schoolmen do not dominate the practitioners, many of whom are still far from convinced that a student's entire training should be received in or controlled by the schools. And the practitioners' bar associations themselves are far from dominating public opinion. When schools and associations work in harmony, they usually succeed eventually in securing that minimum of legislative change which is desired by both. When they oppose one another, it is usually the schools that triumph, at least to the extent of blocking hostile legislation.[1] Add to this that the possibilities of effective evening instruction, with its attendant separation of schools into two quite different types, are far greater in law than in medicine, and it is clear that medical precedents must be used with great caution.

If the establishment of a proper relationship between the schools and the profession is still to be determined, experience at least warns us of certain evils to be avoided. The easy device of appointing the head of a law school as chairman of the committee on legal education is probably the worst of all possible types of interconnection. Instead of resulting in a joint plan of action, agreeable to both the schools and the practitioners, the arrangement usually results in no action at all. On the one hand the chairman may be satisfied with things as they are, in which case no one can prod him into moving. This occurred at the very beginning, when Dwight occupied the chairmanship of the New York City bar association committee. His influence in the fight against codification was too important to make it desirable to dislodge him. Lewis L. Delafield, the pioneer of professional interest in educational reform, was forced to shift his activities to the new state association. There is more than one law school even to-day whose interests are safeguarded by the circumstance that its dean occupies, in the state association, a similarly entrenched position. Or again, if a committee, dominated by a schoolman, proposes positive action directly beneficial

[1] The success of the Suffolk Law School of Boston in securing from the legislature in 1914 the privilege of granting the LL.B. degree against the opposition of all the other Massachusetts schools, the State Commissioner of Education and the Boston Bar Association, is a recent striking illustration of the impotence of a professional organization when opposing a law school that knows how to fight for what it wants.

to law schools, it speaks with little authority before the whole body of practitioners, who can usually be trusted to negative or to pare away the proposals. This was the result of appointing to the chairmanship of the first American Bar Association committee a schoolman — Carleton Hunt of the University of Louisiana (Tulane) — who took his responsibilities seriously. He and all his successors profited by the experience of an initial rebuff. Since then only the most moderate proposals, from a law school point of view, have come before the Association for discussion. Thus, in one way or another, the tendency of the system is to keep things as they are — a result doubtless preferable to progress in the wrong direction, but not very satisfactory either to practitioners who believe that our best law schools are deficient in some respects, or to schoolmen who believe that the associations are not backing them as they ought to.

The truth of the matter is that these associations, composed largely of practitioners without law school training themselves, have never felt a keen interest in the schools. Practitioners have displayed toward them the kindly tolerance and even sympathetic approval that the mere school teacher is apt to receive from vigorous men of affairs.[1] They have not been genuinely interested in making these institutions effective factors in the upbuilding of the new profession. The circumstance that the schools are divided among themselves has of course greatly contributed to the difficulty in establishing satisfactory contacts. Harvard, for instance, began in 1870 to display eccentricities so extraordinary, from the orthodox point of view,[2] as to bring into existence two years later a rival Boston school.[3] For nearly twenty years after this the general attitude of all other schools toward Harvard was that it was riding a New England hobby. What was the natural course for the associations to pursue in such a situation? In Boston itself, where Harvard, right or wrong, is always a power to be reckoned with, the easiest course was to do nothing. The local bar association avoided all difficulties by omitting the usual committee on legal education. Elsewhere the easiest course was to assume that the overwhelming preponderance of conservative opinion, both in the schools and out, made it unnecessary to take Harvard seriously. In other local associations,

[1] And not always this. Compare, for instance, the sneer at "these learned doctors of law schools" when the 1906 report of the Committee on Legal Education came up for discussion in the American Bar Association (29 *Rep. Am. Bar Ass.* 18).

[2] Pages 369 ff. [3] Page 399.

accordingly, the representative of a local school was, quite naturally and with little thought, placed in charge. The American Bar Association took definite sides by making the dean of the new Boston University school a member of its educational committee. When, after 1890, Harvard prestige proved stronger than the lethargic opposition of its critics, and other eastern university law schools began to follow its lead in more or less modified form, representation on the committee was accorded to it, but the controlling chairmanship was retained by western schools. The organization of the Association of American Law Schools in 1900 deepened a line of cleavage that thus early appeared. The net result has been that an increasingly important group of schools has come to be more and more out of touch with the organized body of practitioners. Neither supports the other as it might, and the influence of both is weakened at the bar of public opinion.

The solution of this problem that commends itself to the writer has already been indicated. The suggested requirement by the bar associations of high educational requirements for admission to their own membership would enable the minority of law schools and the minority of practitioners that cherish the highest professional ideals to fortify one another. Freed from the influence of the craft school and its product, they should be able to reach a common understanding as to the proportion of theory and practice that would justify alike the school in awarding its degree to a young man, and the profession in admitting him to its privileges and responsibilities. Two at present inchoate groups of professional organizations, the one standing primarily for sound ethics, the other for sound education, would thereby be fused into one, to their mutual benefit. For although in the preceding discussion the bar associations have been considered as the only organized exponents of professional ideals among the practitioners, this is a slight overstatement of their position. Law school alumni associations, first formed by Harvard in 1886, represent the extension of schoolmen's lines of institutional division out of the academic into the practitioners' field, and suggest that if the group of bar associations refuses to accord proper weight to sound institutional training, it may some day find itself faced by a rival professional organization based entirely upon such considerations. On the other hand, it is far from certain that the mixed membership of existing bar associations would look with favor upon the step proposed. Time only will show whether factional divisions in the profession will be harmonized by a method of treaty and

alliance between the relatively conservative practitioners and the progressive schools; or whether, through a federation of alumni associations, these schools will be able to dispense with the coöperation of orthodox bar associations in securing action from the legislatures and the courts; or whether by a process of peaceful penetration, similar to that which occurred in the medical profession, schools that possess sufficient financial resources to realize their aims will gradually, through their graduates, obtain control of the American Bar Association, and thus be in a position to force its unqualified endorsement of their entire programme.[1]

4. *An Inner Bar distinguished from the General Body of Practitioners*

In conclusion, one point of fundamental importance must be reiterated. In whatever way a united profession is finally formed, the selective principle must be kept to the fore. The state determines the minimum conditions under which young men may be authorized to practice law. Although these conditions need to be made and will in time become less liberal than they now everywhere are, political considerations will prevent them from ever being brought up to the standard properly insisted upon by a minority of law schools. Lawyers constitute our governing class, not merely because a large proportion of public officials and representative law-makers are chosen from their ranks, but, more fundamentally, because even in private practice they play a supremely important part in the administration of the law. Even under an ideal system of government they would continue to occupy this position. It is equally important for the preservation of our democratic ideals that this class shall not be made inaccessible to young men of moderate means, and that attainments more extensive than the minimum required for admission to the bar shall be utilized for the benefit of the community. Our legislators can be trusted to keep the minimum sufficiently low, and even to overdo their caution in this respect.

[1] Discussion of the relations between the American Bar Association and the Association of American Law Schools — one of the sore points of current controversy — is purposely excluded from the present Bulletin. To avoid misunderstanding, however, it seems proper to indicate the writer's belief that the establishment of educational standards for admission into bar associations is a necessary preliminary step, before coöperation between these two organizations can be secured. Meanwhile, the law teachers' association — for this is what the Association of American Law Schools really is — has as its special province the solution of a large number of educational problems, not directly connected with the organization of the profession.

It remains for a selected minority to render the public service, in the improvement of our law, that can be accomplished only by those whose training has been both broad and thorough. The mission of a certain type of law school is to provide this training. To accomplish the end in view, however, much more than the work of scholars and teachers is required. Practitioners of standing must apply their professional experience and their professional influence to the same task. They must cultivate and develop into a living growth the seeds implanted in their student days. They must not be content with futile recommendations of some idealistic scheme, but must labor zealously to secure the actual adoption of concrete measures.

This is to-day the particular responsibility of bar associations. It is a responsibility that they cannot discharge if they endeavor to make of themselves inclusive associations of all reputable practitioners. The state will always admit to its general bar practitioners of types too diverse to be capable of uniting into a single forward-moving profession. We need one group of lawyers who have enough in common with one another to be able to reach an agreement upon something definite — enough at stake to stimulate them into conducting a vigorous campaign in its behalf — enough breadth of view to realize that democracy will always insist upon retaining ultimate control, and will never unreservedly commit either the making or the administration of the law into the hands of any self-constituted body, however deserving. This group should include the lawyers of superior attainments, of broader vision, of greater ability to identify themselves with a larger whole than is possible for relatively untrained minds. The highly trained type of lawyer is most interested, as well as best qualified, to undertake the task of making the law of the community better. We need also, outside of this strictly professional group, less highly trained lawyers to administer, in behalf of the people, the law as it is — lawyers who command their confidence more than the inhumanly expert — lawyers whose own training should be carried at least so far that they can intelligently appraise the activities of the expert group, deferring to them when they so deserve, opposing them when opposition seems needful — a class in the community that may help to bridge the chasm of mutual misunderstanding and distrust that is always likely to appear between those who know too little and those who know too much about a subject. We do not want a heterogeneous organization which, in the vain effort to do two things at once, endeavors to ingratiate

itself with public opinion by letting discordant elements in, and ends as a flabby body incapable of coördinated action. No demagogic talk about "exclusiveness" should keep the professional group from excluding those who do not measure up to standards that, independently of state action, itself defines. That these standards should be educational, is the suggestion advanced here. But better even that professional exclusiveness should be of the wrong sort than that members should not be united by ties of mutual sympathy and understanding.

PART V

CHANGES IN BAR ADMISSION REQUIREMENTS INCIDENT TO THE RISE OF LAW SCHOOLS AND OF BAR ASSOCIATIONS

CHAPTER XXI

PRIVILEGES OBTAINED BY THE LAW SCHOOLS PRIOR TO 1870

IN a broad way, the general laxity of bar admission standards prior to the Civil War favored the development of law schools. As already pointed out,[1] the new type of organized institutional education was built upon the ruins of the older apprenticeship system. Certain adjustments had to be made, however, before the new invention could fit easily into the traditional mechanism.

1. *Recognition of School Work in States Requiring a Definite Period of Preparation*

The first of these adjustments involved the question of whether time spent by a student in a law school might be counted toward the prescribed period of preparation in states where this requirement had been preserved. So far as concerned recognition of the work of a local law school in place of the traditional office work, there was little trouble outside of the middle states. The Litchfield and New Haven schools grew so naturally out of law offices that no one seems to have questioned their students' right to be admitted under the Connecticut rules. Similarly, Harvard considered that by putting its school in charge of a practitioner in the Supreme Judicial Court it had brought its students within the rule requiring law study to have been pursued "in the office and under the instruction of some counsellor" of that court; and in this interpretation of the rule Chief Justice Parker, for obvious reasons, acquiesced. The Ohio rules also presented no difficulties to the organizers of the Cincinnati Law School, for all that Ohio required was two years study of the law, without indication of where this study was to be.

In the middle states, on the other hand, the rules were more explicitly worded to require an actual clerkship, and here they operated for a time to check the development of law schools.[2] New York, it is true, as early as 1797, supplemented its regular apprenticeship system for attorneys by a rule providing that every person who had "regu-

[1] See above, pages 44–46.

[2] See above, page 126.

larly pursued juridical studies under the direction or instruction of a Professor or Counsellor at Law for four years" should be admitted to the superior degree of counsellor. This effort to encourage Kent's Columbia experiment came to nothing, however, and the rule was rescinded in 1829. In 1832 the best that New York University could secure from the Supreme Court for its projected law school was permission to have its course count as two years on the seven years clerkship. The New York City Court of Common Pleas would allow law school work to count toward only one of the four years of preparation that it required for admission to its bar, and in 1845 the Supreme Court reduced its allowance for law school work to the same figure. Pennsylvania, meanwhile, had made no concessions at all in its less extravagant requirements.[1] The path was finally opened to law school development in New York in 1846, through the abolition, by the Constitutional Convention, of the entire apprenticeship system. In Pennsylvania the general system was retained, but in 1853, in the case of bachelors of law of a Pennsylvania college or university who had been admitted to practice in a lower court, the Supreme Court waived its normal requirement of one or two years subsequent practice prior to admission to its own bar.[2] The Philadelphia lower courts simultaneously made it possible for graduates of the new University of Pennsylvania two-year law school to secure admission to their bars as promptly as office students. The combined effect of the changes made by both courts in their rules for admission was to permit students over twenty-one years of age at the time of entering the school to obtain full privileges of practice in two years instead of four. Students under twenty-one were still obliged to serve an additional year's clerkship before taking their bar examinations for admission to the lower courts, but — if they secured their degree — they also were relieved of the two years' delay ordinarily required before they might begin Supreme Court practice.

As in the case of Harvard, these liberal terms showed the advantage of having a judge on the faculty.

[1] So far, at least, as the Supreme Court was concerned. Undoubtedly Judge Reed at Dickinson and Professor Porter at Lafayette saw to it that their students would be admitted to local practice without delay. The Philadelphia bar, on the other hand, was satisfied with its smoothly working and financially profitable apprenticeship system.

[2] The Supreme Court did not conduct any examination of its own. The exemption of law school graduates from the requirement of practice in the lower courts must not be confused with the "diploma privilege" proper (exemption of graduates from bar examinations), discussed in the next section.

The question whether credit should be allowed for work done in a law school situated outside the state was usually merged in a broader one—whether credit should be allowed for any work done outside the state. If it were allowed at all, study in a "national law school" could usually be brought within the terms of the rule. The general argument, however, against law school study—that it may be defective on the practical side—applies with peculiar force to law study pursued outside of the state in which the applicant intends to practice. There was, accordingly, some hesitation in countenancing this departure from the original theory of a locally apprenticed bar. New York's "Professor or Counsellor" was in 1803 required to be a local one. In several states the vacillating policy pursued in this respect reveals an early conflict between the national schools and the local profession. South Carolina, in 1785, accorded to law school work the earliest explicit recognition that has been found in any state. Its statute admitted to practice those who had studied three years in a foreign law college, and in addition passed an examination—this latter check not being required, at this time, in the case of applicants admitted after a four years local clerkship. In 1796, however, the state again required a local clerkship of everybody. In 1801 it facilitated attendance at Litchfield by an amendment permitting the clerkship to be served in or out of the state.[1] In 1806 this was modified again by the requirement that the last year must be spent in a local office. Finally, in 1812, the apprenticeship system was abolished. Similarly, in Michigan, the struggles of Harvard partisans may be seen in a series of statutes which, in 1827, required merely an attorney's certificate of three years law study anywhere; in 1829 provided that not more than one year of law school study might be counted toward this; in 1833 provided that any amount of law school study might be counted, if it were not less than a year; in 1838 provided that the examining judges should determine how much credit (not more than a year) should be allowed for any amount of time spent in a law school; finally, in 1846, cut the Gordian knot by abolishing all requirements of study.

Gradually the majority of states that attempted to preserve the requirement of a prescribed period of study came to modify the original rigor of the local-apprenticeship system in one or another of the ways indicated by these states. Sometimes only a specified part of the period

[1] Calhoun entered Litchfield under this rule.

need be spent within the state, or in an office.[1] Elsewhere there was usually only a vague requirement that the applicant must have studied or read law during the specified period.[2] This degradation of the rule, for which Ohio is primarily responsible, made anything possible. In a very few cases, the rule was phrased so as to permit the entire time to be spent in an out-of-state school, while yet excluding mere private study.[3] In a few states law studies pursued outside of the state continued, technically, not to be recognized, but it is safe to say that if they had been pursued in a law school, time spent in this way would, as a matter of fact, be counted. Statutes and court rules which on their face seemed to limit the applicant to local office work must have been interpreted in the light of the growing reputation of the national schools. Then as now an accommodating attorney could undoubtedly be found

[1] South Carolina, 1806–12, see text, preceding page.

Massachusetts, 1810–36, the first one of the three years law study required of college graduates, or the first two of the five years required of others, prior to admission to the lower courts, might be spent in the office of an attorney of the highest judicial court of another state.

Maine, 1821–30, one of the three years — 1830–37, two of the three years — of professional study might be spent outside the state.

Michigan, 1829–33; 1838–46, see text.

New Hampshire, 1833–38, two years of the three required of college graduates or three years of the five required of others, prior to admission to the lower courts, might be spent outside the state.

New York, 1845–46, one year at the Harvard or Yale schools might be counted toward the minimum three years clerkship required for admission as attorney to the Supreme Court. Legal studies regularly pursued in another state might also be counted toward the remaining four years of either classical or professional training.

New Jersey, 1855, one year, 1868, one and a half years of law school work might be counted toward the four years (or for college graduates three years) required for admission as attorney.

Rhode Island, 1857, one and a half years of the two years required of college graduates might be spent in a law school. No limitations on the three years required of others.

Illinois. For a few years prior to 1865, two years were required for admission to practice in Chicago. Of these one need not be in the state.

Colorado, 1861–66, as Illinois.

Kansas, 1868. Neither of the two years which must be spent reading law was required to have been spent in the territory. The last year, however, must have been spent in an attorney's office.

Wyoming, 1869, as Kansas.

[2] Ohio, 1819; Michigan, 1827–29; Maryland, 1832; Montana, 1865; Colorado, 1866; Oregon, from before 1870.

[3] South Carolina continued the tradition started in 1785 and 1801 (see text) by requiring, in 1868, either two years in a local office, or graduation from any recognized law school in the United States.

The Michigan rule of 1833 (see text) was copied by its daughter territory, Wisconsin, 1836–39, with a reduction of the total period from three years to two.

who would certify that the years spent in these schools had been spent "under his direction," or even "in his office."

Looking at the letter of the law only, the manner in which law school development was affected by the existence of prescribed period provisions in 1870 may be exhibited as follows:

SYSTEM OF PREPARATION REQUIRED BY THE BAR RULES IN 1870

	Number of jurisdictions	
Jurisdictions containing law schools		
Technically entire period must be spent under local practitioner or in local law school. For certain types of applicants (non-college graduates or applicants under twenty-one) the period prescribed by the state was a year longer than the course given by the law school, thus forcing a supplementary year's clerkship (*Connecticut, Pennsylvania*)	2	
Graduation from any recognized law school accepted in lieu of prescribed period (*South Carolina*)	1	
Requirement phrased in general terms (*Ohio*)	1	
No period of preparation prescribed	17	21
Jurisdictions not containing law schools:		
Technically entire period must be spent under local practitioner (*Vermont, Delaware, Washington Territory*)	3	
Technically entire period must be spent under some practitioner (*Nebraska*)	1	
Specified portion of prescribed period might be spent in a law school (*Rhode Island, New Jersey, Kansas, Wyoming*)	4	
Requirement phrased in general terms (*Maryland, Colorado, Montana, Oregon*)	4	
No period of preparation prescribed	14	26
Total number of jurisdictions		47

Study of this table will show that, by 1870, already established schools were in no way discriminated against by such old-fashioned apprenticeship requirements as lingered in their home states. If no applicant for admission to the bar was required to go to a law school, at least no applicant was required to go anywhere else, and in an open competition the superior system of instruction was in a position to carry off the honors. If preferential treatment was accorded to either type of applicant, it was, as in Pennsylvania and South Carolina, to the law school graduate. Moreover, in jurisdictions where no law schools had been started, the occasional requirement of office work, even if enforced, was not on the whole a disadvantage to schools in other states. To the extent that the provision tended to keep students out of existing national law schools, it also tended to prevent rival schools from being started in the localities. Its effect in either direction, however, was slight. In Rhode Island

and New Jersey the amount of credit allowed for law school work was nicely calculated at the precise length of the Harvard degree course. If these states chose to demand additional local office training as well, this was in entire harmony with the theory upon which the Harvard law school was founded.[1]

Now, if prescribed period rules are so phrased, or so interpreted, as to permit the period to be spent in a law school, then these rules are of great assistance to the schools. The principal deterrent upon law school attendance—unwillingness on the part of applicants to devote an adequate time to their education—is removed. The additional expense involved in attending a law school, rather than frequenting an office in one's home town, is a small consideration beside the question of whether one can afford the time. It is no consideration at all in the case of a school that caters to self-supporting students.

We may summarize the influence of the ruined apprenticeship system upon law school development prior to 1870 by saying that the remains of this system—those portions of the débris that remained standing—were for a time somewhat in the way, but that with a little adjustment they became converted into a positive prop to the new educational structure.

2. *Exemption of Law School Graduates from Bar Examinations*

It was only in the North, however, that there existed these state requirements of a definite period of preparation, which at first hampered, but finally protected, the law schools. The southern schools from the beginning, and after 1840 a majority of the schools throughout the country, operated in an absolutely open market in this respect. The necessity of somehow passing a bar examination was all that the applicant, impatient to enter practice, need bear in mind; and with reference to this requirement the schools were in the unfortunate predicament that if, as was usually the case, the examination did not amount to anything, applicants could pass it without attending the school; while if, on the other hand, the courts, manned by office-trained judges,

[1] Chief Justice Parker's views as to the practical value of supplementary office work have already been cited in the text. Judge Story, writing at the same date, was equally explicit. He says in his review of Hoffman's *Course of Legal Study* (*Miscellaneous Writings*, p. 243), "Such a situation is indispensable after the student shall have laid a foundation in elementary principles under the guidance of a learned and discreet lecturer. He will then be prepared to reap the full benefits of the practice of an attorney's office."

decided that since this was the only barrier upon admission it ought to be a serious test, the examination might be one that the school graduates were not fitted by their training to pass. It was natural that these schools, being in so much worse plight than those protected by the prescribed period, should be the first to apply to the state legislatures for special privileges, and that later their example should be followed by these others. After this, the revival of prescribed period provisions, in modified form, became a subordinate item in the policy of the schools. As recent graduates entered into politics, and thus an element friendly to the schools appeared in the legislatures, exemption of future graduates from all examination or licensing tests was boldly sought. Even when the bar examination amounted to nothing, advertisement of the fact that law school graduates need not take it was calculated to stimulate attendance in at least three ways. Students were relieved of the *in terrorem* effect that even the weakest examination exercises upon an immature mind. In many cases some incidental inconvenience and expense would be obviated as well. Above all, the possession by the school of this privilege definitely stamped its work with the seal of approval by the state. When the bar examinations were notoriously a farce—when, also, the corresponding privilege of exemption from medical licensing tests was one that medical school graduates had long enjoyed[1]—it seemed almost an insult to withhold the same mark of recognition from a deserving law school. The argument was particularly strong in the case of a university which was itself supported and controlled by the state. In a few cases there was added to these considerations the fear that the state authorities might set a wrong kind of examination.

This "diploma privilege," as it is usually termed, appeared in Virginia first in 1842, in the shape of a statute permitting the diploma of graduation from any university or college law school in the state to take the place, in Virginia's complex admission system,[2] of the usual license.

[1] In New York since 1797; in Maryland since 1799. See Davis, N. S., *History of Medical Education and Institutions in the United States*, 1851. Dr. Davis was a strong opponent of this exemption, which at the time he wrote, was common in states that possessed any regulations at all affecting the practice of medicine.

Such regulations of medical practice have never had any other purpose than that of raising the standards of the profession as a whole as nearly as possible to the level already reached by the schools, or by certain schools. It was therefore natural that in many states the graduates of these schools should have been exempted from the regulations. Experience demonstrated, however, that even in medical education this was a mistaken policy.

[2] See above, page 97.

In this case there was nothing in the examinations conducted by the judges to hamper the work of any school. The passage of the act was dictated entirely by the general considerations above described. It represented mere legislative favoritism of the law schools maintained by William and Mary and by the University of Virginia, at the expense of other methods of legal education—notably rival private law schools. It was entirely out of harmony with the *laissez-faire* spirit of Jeffersonian idealism, and was repealed in 1849 at the instance of Professor Minor of the University school, who informed the Code Revisors that he thought it "better for those institutions, as well as the young gentlemen who graduate therein, that they should not enjoy this exclusive privilege; but that their fitness to practise law should be tested in the same way with students in private offices or in private law schools."[1]

This repudiation of legislative coddling exhibits Professor Minor in a highly favorable light. And in a state where there were no existing bar standards, and the reputation of the State University was such that its lead was likely to be followed by the courts, there can be no question that Minor's was a wise and broad-minded policy. As a doctrine of universal application, however, it does not quite meet the situation that exists when courts attempt, independently of the local law school, to develop a rigid system of examinations, uniform for all applicants, however trained. This was the handicap under which the law department of the University of Louisiana labored in 1855. The Supreme Court had prescribed a list of textbooks, in which for fifteen years there had been no change. A standing committee existed to examine New Orleans applicants upon these texts. This was obviously an intolerable clog upon the development of the law school curriculum. It excused, if it did not justify, the enactment that year of legislation exempting law graduates of the State University from any further educational tests for admission to practice.

After this precedent, other schools secured similar legislation, some-

[1] *Report of the Revisors*, 1849, p. 824.

Minor had also two other objects in desiring the change: "one, that the Judges might have an opportunity of seeing with what degree of thoroughness students were prepared for the practice; and the other, that these dignitaries might have before them, in young men educated here, a much higher standard of attainment than they had been wont to require." Letter to Lewis L. Delafield, printed in *Report of the Committee on Legal Education and Admissions to the Bar, made to the Association of the Bar of the City of New York*, 1876, p. 14.

times with a similar excuse;[1] more often merely to stimulate attendance. In the North an intermediate step, suggested, it would appear, by the Connecticut statute regulating admission to the medical profession,[2] was necessary before any school dared to ask for the full exemption privilege. This intermediate step was to have the state admitting authorities conduct the examination for the school's own degree. The opening of Professor Dwight's school at Hamilton College, in a remote village of New York, was made possible in this same year, 1855, by a special act of the legislature authorizing the court to appoint a committee of counsellors to examine candidates for the LL.B. at the school. Students whom this committee should recommend for the degree would be admitted to practice without further formalities. This seemed like a reasonable attempt to reduce geographical inconvenience to a minimum, but the practical operation even of this act, and of similar legislation enacted the following year for the benefit of Ohio schools, could not have been very different from complete exemption from court control.[3] In 1859 the authorities of the Albany Law School, without the slightest excuse on geographical grounds, were able to take the final step. They secured legislation which, in terms, constituted their own faculty the examining committee for admission to practice. The following year Dwight secured a similar privilege for his new Columbia law school, and established the constitutionality of this legislation to the satisfaction of the Court of Appeals, against the heated resistance of the Supreme Court judges. New York University, of course, insisted upon receiving the same favor.[4] One of the inherent vices of the diploma privilege already appeared—the practical impossibility of according it to one without according it to all the law schools of a state. By 1870 nine schools, in seven states, had secured the privilege. Along with many minor variations, one feature was present in every case. Graduates of

[1] A convention of Georgia Superior Court judges, during the thirties, defined the content of their examination in very general terms. The New York Supreme Court judges, in 1858, drew up a more elaborate list of subjects.

[2] See Davis, p. 96.

[3] In Ohio the legal effect of the examinations held at the schools was merely to admit students to practice. The schools, however, naturally conferred their degrees on the basis of the same examinations, so that the final result was the same as at Hamilton.

Under the influence of this tradition, one of the requirements for the degree in the Cincinnati Y. M. C. A. Night Law School, as late as 1915, was "admission to practice law in the State where the applicant resides at the time of graduation."

[4] Dwight appeared as counsel for both schools. See *Matter of Graduates*, 10 Abbot's Practice (1860), 348; *In re Cooper*, 11 Abbot's Practice (1860), 301, or (less full report) 22 N.Y. 67, for a very interesting exhibition of judicial temper.

these schools were entitled to practice without undergoing any independent educational test at the hands of state authorities.[1]

Occasionally the schools established such friendly relations with the courts or practitioners of their state that they could obtain the diploma privilege without recourse to the legislature. In 1863 the Chicago examining committee formally extended the privilege to graduates of the old University of Chicago law school, but two years later this rule disappeared in a general overturn. No other formal instance, prior to 1870, has been found. Undoubtedly, however, examining courts or committees were often influenced in an applicant's favor by the fact that he was a graduate of a local school. Indeed, Professor Minor found it a cause of complaint against the Virginia judges that, as late as 1876, they usually declined to examine his graduates.[2] Almost invariably the formal privilege was restricted to graduates of a local law school, and no distinction was made in the examination required of other applicants, whether they had been trained in an office or in an out-of-state law school. Each state was interested primarily in protecting its own infant industries. The Louisiana statute, however, was notable in that it exempted graduates of out-of-state schools from the usual comprehensive committee examination, substituting merely an examination by

[1] 1855, Louisiana. Law graduates of the State University were entitled to secure license from the court on evidence of good character. And see text, below.

1857, Mississippi. The diploma of the State University law class was made equivalent to a license.

1859, Georgia. The act incorporating the Lumpkin Law School (affiliated with the State University) empowered its officials to grant diplomas which should entitle the holders to practice upon payment of the usual fees and taking the oath.

1859, New York. The University of Albany faculty were constituted an examining committee whose recommendation, as evidenced by their diploma, if given for not less than three terms of twelve weeks, would admit to practice.

1860, New York University. The same, but a diploma given for two terms of twelve weeks and one year's study of law elsewhere would also suffice.

1860, Columbia College. Similar, but the committee consisted of the professors and the Law Committee of the Trustees, and the course of study must cover eighteen months.

1860, Tennessee. The law faculty of Cumberland University "or any other law schools in this state shall have the same power to grant license to practice law in the courts of this state that the judges of the courts now have."

1863, Michigan. The courts were forbidden to require examination when satisfied that applicant was a law graduate of the State University.

1870, Wisconsin. Law graduates of the State University were entitled to admission upon presentation of a certificate of graduation.

[2] "The barren compliment is, in my estimation, a poor recompense for the benefit which the school and the profession might derive from putting our neophytes through their paces before the judges." Letter to Delafield, cited above.

the Supreme Court. In view of the fact that Louisiana jurisprudence is distinguished from that of other states by a strong and quite individual strain of French law, this was a remarkable recognition of the value of law school training in general. The statute showed a discriminating liberality that is seldom found in bar admission requirements.

Finally, in Oregon, where no law school existed, the Supreme Court adopted, before 1870, a rule of quite singular generosity. It provided that the diploma of any school that would admit to practice in its own state would also admit to practice there.

CHAPTER XXII

REACTION OF THE NEW LEGAL PROFESSION AGAINST LAW SCHOOL PRIVILEGES

THE preceding chapter makes clear that, immediately prior to the organization of bar associations, the law schools were beginning to take the lead in the development of bar admission rules. When questions arose which affected their interests, and thereby those of the community at large, the schools were in a position to negotiate directly with courts and legislatures. The common device of putting a judge on the faculty was of great assistance in promoting harmonious relations with the courts. The political ambitions of their young graduates ensured their representation on the floor of the legislature. In one or the other of these two ways active educational institutions possessed a great advantage over unorganized practitioners. The schools were not yet strong enough to supplant the existing low requirements for bar admission with stringent new rules designed to fortify their work. They were, however, strong enough to prevent the old requirements from being manipulated to their own disadvantage.

1. *Professional Criticism of Law Schools*

With the advent of the bar associations, a new force, however inefficiently organized, had to be reckoned with. It has proved impossible for these two forces to unite on a comprehensive programme. Such a programme, which provided, among other things, that David Hoffman's entire course of study, *at least*, should be given in a three-year law school, was, indeed, laid before the American Bar Association in 1879 by its Committee on Legal Education. The recommendation represented, however, only the views of the three gentlemen who signed it, and received scant courtesy from the Association. It is not by formulating and gradually realizing comprehensive programmes of reform that American democracy expresses itself. Legal education has been patched up since then in the usual way in which our laws and our institutions develop. Sometimes the bar association and the schools have worked together to deepen and elaborate and generally to perfect the rut into which law schools and bar admission rules had fallen, without introducing any essentially new ideas. Sometimes schoolmen continued

to be sufficiently in control of the local situation to be able to develop their institutions along such lines as seemed best to them, unassisted but unhampered by the practitioners. Sometimes, however, schoolmen's and practitioners' theories of education came into conflict with one another. Two main streams of development had been started: the original movement to foster law schools, itself soon to be complicated by the diversification of these schools; and a more recent movement emanating from the new profession, to raise standards. At the point where these two streams came together — the provision made for law schools, namely, in the rules for admission to the bar—countercurrents developed.

The older practitioners, influential in the professional movement, and without law school training themselves, saw most clearly that their trust in the schools had been betrayed. While they recognized that a good law school training was desirable, they conceived it to be part of their responsibility to make it good. They sought to impose upon the schools their own educational standards.[1] On the other hand, the school authorities felt, very naturally, that a movement not engineered by themselves was likely to do more harm than good. The strongest expression of this feeling was voiced by Dean Langdell of Harvard with especial reference to two occurrences: the failure of some of his graduates in the recently established Massachusetts county board's examination, and the refusal of the New York court to allow credit, toward its prescribed period, for time spent in an out-of-state law school.[2] After noting that the law schools had not participated at all in the movement to raise the standards of admission in these leading states, and that it was not "in any degree the aim or object of the movement either to support and strengthen law schools or to make use of them in furtherance of the objects in view," he threatened reprisals in the following words:

> "While this state of things continues, it is obvious that this school has much less to hope than to fear from any so-called efforts

[1] See especially Lewis L. Delafield's vigorous attack upon the New York schools in *Report of the Committee on Legal Education and Admissions to the Bar, made to the Association of the Bar of the City of New York*, 1876. Short period of instruction, absence of entrance requirements, and pecuniary interest in securing students were his principal grounds of criticism.

[2] Langdell did not specifically mention the Massachusetts situation. Much of his argument, however, is clearly directed to this point. As to the facts involved, see 14 *American Law Review* (1880), 76. "Quite a local stir was made by their unexpected rejection of a number of respectable graduates of the neighboring law schools."

to raise the standard of legal education; and that its interest lies rather in the direction of opening the legal profession to all the world."[1]

This utterance shows how sharply contrasted are the points of view naturally held, with equal sincerity, by practitioners and by schoolmen. To practitioners, the schools constitute only one element among several that must be supervised and improved, for the purpose of raising the general educational level. To schoolmen, assistance in developing their institutions, according to their own ideals, constitutes the essential feature of educational advance, to which all other considerations should be subordinated.

2. *Crediting of Law School Work toward the Prescribed Period*

Prior to the Civil War, as we have seen,[2] the law schools had demanded from the admitting authorities either of two privileges. If a definite period of law study was prescribed, then study in the law school must be allowed to count toward this requirement. If, on the other hand, the only test was a bar examination, then—whether this examination amounted to anything or not—it was often insisted that graduates of the law school should be exempted from it. After the Civil War, the schools grew bolder. The old University of Chicago law school (present law department of Northwestern University) was the first school, in a state where a period of law study was prescribed, to secure exemption of its graduates from the examination. This privilege was accorded as a substitute for the more moderate one of permitting time spent in the school to be reckoned as the equivalent of office study. The substitution was effected in 1863, and lasted only until the requirement of a prescribed period was itself abolished in 1865. Later, there were a few similar instances in other states.[3] Since, in such cases, applicants, not ac-

[1] *Annual Reports of the President and Treasurer of Harvard College*, 1876–77, p. 87. Extracts from Langdell's attack appeared in 12 *American Law Review* (1878), 601.

[2] Preceding chapter.

[3] Pennsylvania, 1876, time allowance for admission to Philadelphia courts converted into exemption from examination, coupled with abolition of the additional year's clerkship for graduates over twenty-one. This was criticized as going too far. The Supreme Court repealed its old exemption of law graduates from the requirement of lower-court practice prior to admission to its own bar, and by 1881 examinations were again required in the lower courts.

Louisiana, 1877–1911, having already the diploma privilege, introduced the requirement of a clerkship for non-graduates.

Minnesota, 1889–91, introduced the two provisions simultaneously.

tual graduates, were held to a period of service under an attorney, this was a great aid to the exempted schools, both in securing and in retaining their students.

The difficulty with provisions of this sort was that they ran counter to the interests of schools situated outside of the state. These were unable to secure an extension of the diploma privilege to their own graduates.[1] They accordingly exerted their influence to allow time spent with them to be counted toward the prescribed period. Under these circumstances the easiest way to phrase the rules was to give credit for time spent in any school. In 1881 the American Bar Association recommended the allowance of law school credit in this indiscriminating manner, and this is now the invariable rule. Wherever a definite period of preparation is prescribed, time spent in any law school may be counted toward it, irrespective of the question whether one or more local schools enjoy the diploma privilege in addition.

Such being the general principle on which all parties —local schools, "national" schools and the profession itself — have agreed, two points remained to be settled: first, how much law school work, and second, how little law school work, might be thus credited?

As to the first point, the prevailing attitude of the profession has always been that even a complete law school course is inadequate preparation for admission to the bar, and that a certain amount of practical office work should therefore be required in addition. The law schools have disputed this contention, and in general they have won their point. Occasionally, they have even succeeded in securing a reduction in the amount of time required of law school students.[2] In a few states additional time in office practice is still called for, but permission to satisfy the requirement during summer vacations, or the operation of the diploma privilege, makes the rule of no great practical importance so far as local schools are concerned. Upon out-of-state schools it of course bears a little harder. In New York, for other than college graduates, the total period is four years, to include at least one year of con-

[1] The partial Louisiana exemption was abolished in 1877; the broad Oregon exemption in 1880.

[2] For an obsolete Pennsylvania instance, compare page 244. Between 1890 and 1907 the period for non-college graduates in Connecticut was three years, unless they were law school graduates, in which case two years (as for college graduates) would suffice. Since in all cases one year must have been spent in the state, this was in the immediate interest of the Yale law school. The rule replaced one under which Yale enjoyed the diploma privilege. In Michigan, since 1913, the period for office students has been four years, as against three years for law school students.

tinuous clerkship; allowances for vacations, however, make the total time less for a combination of school and office work than for office work only. In general the requirement of supplementary office work, in its present fragmentary form, constitutes a hardship to the student, with little compensating educational or ethical gain. Whether, in spite of this, the principle involved — the encouragement of practical training — is of such importance that it should be carried out more effectively than occurs in any state to-day, is a matter of current controversy, as to which a word will be said later.[1]

A less generally recognized deficiency in our present bar admission rules is the opportunity they afford applicants to build up a prescribed period of study by piecing together small bits of law school and of office work. Originally, several of the states, notably Pennsylvania, accepted time spent in a law school, in satisfaction of the required period, only in case the student had taken the entire course required by the law school, and had graduated. Under early advanced standing rules, however, the schools allowed time spent in other schools and in offices to be counted as part of their own residential period, leading to their own degree. This practice militated against a restriction of the privilege, and the American Bar Association resolution of 1881, recommending the counting of time spent in a law school, was unfortunately phrased, in this as in other respects, in too general terms.[2] Occasionally to-day applicants who come from law schools situated outside of the state are exempted from requirements of local study only in case they are graduates.[3] So far, however, as local schools are concerned, it is the invariable rule that a partially completed course of study will be accepted. The possession of a law school degree is no longer invoked to justify the exemption of school-trained students, in whole or in part, from the traditional apprenticeship period under an attorney. This exemption is accorded for any amount of time spent in a law school; the degree constitutes the basis not for this privilege, but — in some states — for

[1] Page 286.

[2] "The time spent in any chartered and properly conducted law school ought to be counted in any state as an equivalent to the same time spent in an attorney's office in such state in computing the period of study prescribed for applicants for admission to the Bar."

[3] Owing to the special peculiarities of Louisiana law, it was many years before any credit was allowed here for study pursued outside the state. At present, however, graduates of out-of-state schools are permitted to take the examination. In Connecticut such graduates are now exempted from the requirement, otherwise imposed, of local study during at least one year.

Compare the New York rule of 1878–82, page 260, note 2.

the broader one of exemption from the bar examination also. While this result may be regarded as a victory for the schools as against the profession, it is a victory that works no benefit to either. Students who fail in their school examinations are tempted to abandon the institution in favor of the easier attorney's-office and bar-examination road. The bar examiners are compelled to read the papers of young men whose training has consisted of uncoördinated scraps. Whatever may be thought as to the adequacy of a complete law school course, as a preparation for admission to the bar, there ought not to be two opinions as to the inadequacy of an uncompleted or unsuccessful law school course, pieced out by unsupervised work in an office or in private study.[1]

3. *New York Controversy*

The varying points of view of the schools and of the profession, and the danger that in the attempt at reconciliation a compromise may be effected that is harmful to both, were strikingly illustrated in New York, where an unusually strong law school early came into conflict with an unusually strong bar association. The profession here took a position in regard to the counting of law school study which greatly intensified the schools' desire to be free from all burdensome regulations. Theodore Dwight certainly had some justification for organizing, as he did, a legislative machine to ensure retention of his Columbia diploma privilege when the Court of Appeals, having been given power by the legislature to determine the educational qualifications of applicants who were obliged to take the regular bar examination, ruled in 1871 that such applicants must have studied law three years, towards which only one year's study in Harvard, Yale or a local school con-

[1] The following is a typical and by no means extreme instance of what occurs under current bar admission rules. At the end of two years irregular attendance at a certain western state university law school, a student had failed to pass examinations in about one-fourth of his first-year work, half of the work of the next semester, and all the work of the final semester. He was eventually expelled from the school. He was entitled, however, to certificates showing that he had completed one and two-thirds years of the three years study required for admission to the bar.

Often the inherent weakness of the rule is accentuated by lax administration. The following passage is quoted from a report made to the Carnegie Foundation concerning admission to the bar in a southern state: "At the February, 1914, examination an applicant, in conversation, admitted that he had studied law only four months, part of the time at the state university, part of the time with a lawyer and part of the time by himself. He also stated that his father, a lawyer, would not give him a false certificate of two years law study and that he had to go and get his certificate elsewhere. He passed the examination."

For recent efforts to remedy this evil in New York, see below, page 263.

nected with a college or university might be counted.[1] In 1877 the more reasonable rule was adopted that only a single year's clerkship would be required, in addition to time spent in a law school. This law school must, however, be a local one. It was this absolute exclusion of out-of-state schools from any participation in the training of New York lawyers—a discrimination the more marked because the local schools still preserved, by legislative favor, the diploma privilege—that was the ostensible occasion of Langdell's attack upon the theory of independent bar examinations, and all "so-called efforts to raise the standard of legal education."[2]

The primary reason for the distrust of law schools evinced in these rules was a growing feeling in the profession that the schools were weak on the side of practice. In the case of a small local school, enough might be done along this line to satisfy the not over-exigent practitioners. Harvard and Columbia, however, were not simply weak on this side. They were deliberately and avowedly neglecting this phase of legal education, in favor of other branches of the law that they considered of greater importance. In spite of Langdell's assertion[3] that there was no settled tradition of law training, there was among the older members of the bar a very well-defined tradition of close coöperation between law school and office. These gentlemen believed that the large national schools, in departing from this tradition, were going hopelessly astray, and accordingly they bent their energies to remedying this situation. One form that their activities took was the founding of new practical law schools, whereby daily half-and-half theoretical and office training might be given — the English theory of legal education, which Benjamin F. Butler had long before this tried to introduce in the unsuccessful experiment at New York University.[4] Another form was the adoption of the bar admission rules just described, designed—in imi-

[1] This extraordinarily niggardly recognition of the law schools may have been an act of retaliation by the Court for not being given full control by the legislature. It represented, however, the traditional recognition accorded to law school work, in this state, prior to the abolition of the prescribed period in 1846. Compare page 244.

[2] The president of the University also protested, and the discrimination was removed the following year, except that, for the moment, mere time spent in an out-of-state law school would not be credited. In addition to the one-year clerkship, graduation from a two-year school which required a public examination for its degree was necessary. Since 1882 the usual custom of counting scraps of time in any school has been followed.

[3] See below, page 269.

[4] As to this line of development in law schools, see below, pages 395, 399.

tation of similar provisions that had survived in states where law school influence was weak[1]—to ensure a supplementary clerkship of at least a given amount. It is significant that no corresponding minimum of law school work was named, nor any sequence required for the two types of training.

The reform to which Lewis L. Delafield, however, himself a Columbia College graduate, devoted himself during seven strenuous years in New York[2] went farther than this. It was nothing less than a revival, in slightly modified form, of the original Harvard idea. He wished graduation from a law school to be followed by an obligatory year's clerkship, thus providing a combination of theoretical and practical work and at the same time doing away with the vicious system of adding together scraps of both types of training. To this end it was necessary to repeal the privilege enjoyed by the New York schools of passing their graduates directly into practice. Incidentally, Delafield sharply attacked, on principle, the exemption of these graduates from the regular bar examination, but it is evidence of how strongly he felt in regard to his supplementary clerkship year that he was willing to waive his objections to this examination privilege for the sake of securing his major reform. It is interesting to note also that Langdell, although he agreed with the position assumed by the judges of the New York Supreme Court,[3] and later by the American Bar Association, that all that was requisite was that law school study might be freely credited on a prescribed and reasonably long term of pupilage, was willing to accept Delafield's plan in this form.[4] Had these two gentlemen, representing two quite different interests, been allowed to have their way, this not unreasonable compromise might have been effected. The New York system would then have resembled somewhat the situation that obtained in medical education.[5]

[1] See above, page 247.

[2] 1875–82. See *Report of the Committee on Legal Education and Admissions to the Bar, made to the Association of the Bar of the City of New York*, 1876, and 3–6 *New York State Bar Association Reports* (1879–82), for an account of Delafield's great fight.

[3] In a petition addressed to the legislature, 1875. Under the new statute they administered the examinations under rules prescribed by the Court of Appeals.

[4] *Report*, pp. 92, 95. In one important respect, as will be shown in the next section, Langdell disagreed with the judges. He did not favor a stringent bar examination.

[5] In his report to the Bar Association, Delafield adduced as a precedent the rules of the Philadelphia Court of Common Pleas. Unluckily this court introduced the diploma privilege, admitting directly into practice, the same year. In an address delivered before the American Social Science Association the following year, Delafield accordingly invoked the medical analogy: "No person should be admitted to the bar who

Under the original three-year rule, there would seem to have been no reason why Dwight also, with his two-year school, should not have accepted the requirement of a supplementary year of clerkship, except on the theory, later advanced, that two years in a law school is a fair equivalent of three years elsewhere. In 1875, however, the Court of Appeals inconsiderately reduced the period to two years, in the case of college graduates who had studied jurisprudence and legal history.[1] Since one of these two years must be spent in a law office, the practical effect of abolishing Dwight's diploma privilege would have been to tempt college graduates to desert his school after a single year. He accordingly rejected the proposition and there ensued a bitter fight, in which Delafield had the support of the State Bar Association and the Court of Appeals, while Dwight, through his graduates, was strong in the legislature. The continuance of the diploma privileges enjoyed by the New York schools became the principal issue. In 1876 Delafield induced the legislature to abolish these privileges, but Dwight at once secured a suspension of the act for one year, and this suspension was annually renewed, to the accompaniment of charges of bad faith by Delafield, who then tried another line of attack. He secured the exclusion of Columbia law school graduates by one court, on the ground that they had not studied during the full period required by the act conferring the diploma privilege—only to see these same students secure admission to practice from another court. When it finally became clear that the diploma privilege could no longer be defended successfully before the legislature, Dwight's supporters made a last stand on the proposition of a shorter period of study for law school graduates than for other applicants.

Ostensibly, Delafield won this final battle also. The legislature left the whole matter to the Court of Appeals. By what has all the outward earmarks of a "deal," however, the Court promulgated a wretched compromise. Law school students (whether graduating or not) could count time spent in the school for all except a year of the prescribed period.

has not acquired some knowledge of the practical application of law in an office. The analogy between the physician and the lawyer is perfect in this respect. A medical school which provided neither hospital nor clinical instruction would be held up to ridicule." *Conditions of Admissions to the Bar. Paper read before the Social Science Association at Saratoga*, 1876, p. 11.

[1] It has been stated that the purpose of this rule, broadened two years later to cover all college graduates, was to facilitate the admission of a relative of one of the judges. Judge Noah Davis, in a note appended to Delafield's address before the Social Science Association, stated that the rule was made "to meet an existing exigency."

Any amount of law school study, however small, might be counted, and in case the maximum time was spent in a school the balance need not be made up, as under Delafield's original plan, by a subsequent and consecutive clerkship of a year. Instead, it might be made up by twelve months office work pursued at any time, notably— to the extent of not more than three months in any one calendar year—during law school vacations. Thus what the legislature had refused to do openly, the Court virtually did in an underhand way. A substantial saving of elapsed period of study was effected for law school as compared with straight office students. Delafield had secured the abolition of the diploma privilege, but his original design of a complete theoretical law school course, supplemented by a year's practical office work, had degenerated, under school opposition, into the combination of scraps already familiar in other states. And the contest had been so heated that at its conclusion all concerned were tired of the subject. New York rested fourteen years before another move was made to better its admission system.

Since then some progress has been made. The supplementary year of office work must now be continuous. Certain classes of applicants, however, need not serve this office year. And the cardinal evil of the 1882 rules—the privilege of counting small fragments of time spent in a law school toward the total period prescribed by the state—still persists, despite efforts made by the State Board of Bar Examiners to remedy it.[1]

4. *Practitioners' Examinations* versus *Admission on Diploma*

We have seen how the demand made by practitioners for greater attention to the practical training of applicants was urged against the opposition of schoolmen who wished the entire period of preparation to be spent in their own schools; and how the principal result of the controversy has been to throw the rules prescribing a definite period of preparation into a confusion that injures the schools, and yet has little value in accomplishing the objects of the practitioners. This same emphasis laid by practitioners upon practice was a factor in stirring up their opposition to the diploma privilege. Broader issues, however,

[1] The failure of the Board to gain the support of the Court may be ascribed to the fact that they have recommended, not merely that no credit shall be given except for a successfully completed law course, but that all applicants must be thus qualified. It is open to grave question whether the state should delegate to private institutions the power absolutely to exclude applicants from admission to the bar.

were here involved. The new profession was beginning to feel its responsibility for legal education in general. "Examination" was a word to conjure with in the years immediately following the Civil War, as, indeed, to some extent it still is. Both in the universities and in governmental administration, written tests were thought by many to be infallible means of determining proficiency. Very naturally the practitioners absorbed the idea that the strengthening of their own bar examinations provided the weapon by which they might force inferior schools to conform to their own higher standards. To this end it was clearly necessary to curtail the privilege claimed by several schools of having their graduates exempted from the examinations. On the other hand, this attitude on the part of the profession made the diploma privilege even more important to the schools than it had been before. If they could not secure it, then they were roused to avert in other ways the danger that threatened their free development. Thus, Harvard did not demand the diploma privilege, but after Langdell's protest[1] it did secure from Massachusetts bar examiners a favored treatment of law school graduates, which survives to some extent to the present day.[2] The relative novelty of examinations conducted by the school itself made it sometimes possible to devise a system which, as already at Hamilton, gave the admitting authorities the shadow, but hardly the substance, of control.[3] In the main, however, there was a simple

[1] See above, page 255.

[2] Francis L. Wellman, writing in 1881, says: "In Massachusetts, in certain counties, the law school diploma seems to give rise to a legal presumption in favor of the candidate." (15 *American Law Review*, 295.)

This arrangement, which has proved sufficient to satisfy Harvard, is a matter of customary board procedure rather than formal rule. It resembles the Virginia custom (page 252) of being easy on University of Virginia graduates—a tradition which not only continued in Virginia itself, but, according to Wellman's tabular view of bar admission requirements, made a diploma from the new West Virginia University law school equivalent to a license, before this privilege was formally conferred by statute. Doubtless in many other jurisdictions graduates of local schools, whether of law or of medicine, were and are similarly favored in practice.

[3] At the University of Iowa Hammond introduced, about 1873, in obvious imitation of the privilege enjoyed by the Yale medical school, an arrangement whereby the school examination, admitting into practice, was conducted by a committee appointed jointly by the University and the Supreme Court. At Yale, between 1880 and 1890, the school examination admitting into practice was conducted under the supervision of a committee appointed by the Supreme Court. Compare, as to Hamilton, page 251.

Domestic and foreign experience both show that under these circumstances the visiting outsiders are submerged in the resident faculty, and that this is virtually equivalent to the full diploma privilege. Guests of a school have to be courteous. *Crede experto.*

conflict between the only two methods of determining the proficiency of law school students that had then — or that have since then — been devised. These were, on the one hand, to leave the determination to the authorities of the individual school, or, on the other hand, to entrust it to a body of judges or practitioners, supposed to be competent to conduct a general and uniform test without reference to the type of training favored by particular schools. And since there were unanswerable objections to either plan, the one finally adopted by any state represented rather a defeat for the opposing party than an inherently satisfactory arrangement.

Prior to 1890 the schools had on the whole the best of the controversy. New York, in which the working of the diploma privilege had been criticized at the very first meeting of the New York City Bar Association, abolished it, as we have seen, in 1882.[1] This was the only state, however, in which any exemption established prior to 1870[2] was done away with during the next twenty years.[3] On the other hand, Georgia, already granting the privilege to State University law graduates, extended it to Mercer in 1875 and to Emory in 1888. In Tennessee, under the statute granting it to any law school in the state, three new schools arose before 1890. In jurisdictions where it had not previously appeared, it was sometimes introduced only to be abolished and then again restored.[4] The net result was to increase the number of exempted

[1] Page 262.

[2] See above, page 252.

[3] Michigan, in 1881, repealed the statute specifically forbidding the courts to examine state university graduates; it may be presumed, however, that a Circuit Court could be found willing to continue the privilege, which in 1895 was again placed upon a statutory basis. Oregon abolished in 1880 its court rule exempting from its examination graduates of out-of-state schools exempted in their own states.

[4] The following jurisdictions introduced the privilege for the first time during this period:

District of Columbia, at least for Georgetown, in 1870 (Shea, J. G., *Memorial of the First Century of Georgetown College*, 1891, p. 241). Abolished, probably 1875.

Maryland (University of Maryland), 1872. Converted into evidence of prescribed period, 1876. Restored, 1888.

Connecticut (Yale), 1872. School examination conducted under supervision of a committee appointed by the Superior Court, 1880. Privilege abolished, 1890.

Kentucky (University of Louisville), 1873; (Transylvania), 1874.

Iowa (State University), by statute, 1873. The joint examination described on the preceding page may have antedated this code provision. Converted into special examination held at the school (as in Ohio, 1856–90, see page 251), 1884.

Missouri (Washington University and University of Missouri), 1874.

Pennsylvania (University of Pennsylvania), 1875. The exemption did not cover the preliminary examination on general education. Abolished by 1881. Restored (grad-

schools from nine schools in seven states in 1870 to twenty-six schools in sixteen states in 1890.

After 1890 the American Bar Association, which had skilfully dodged the issue in a resolution adopted in 1881,[1] declared against the diploma privilege in 1892, and, more explicitly, in 1908. At the same time, one of its inherent evils—its liability to spread from one school to all the schools in the state[2]—brought its own corrective with it; in several states schools that have found they could not monopolize the privilege have taken the lead in asking for its abolition. Many schools, however, have clung tenaciously to this means of protecting themselves, especially where the general bar admission requirements have been lax. It was not until 1917, when the numerous California and Minnesota schools lost their exemption privilege, that a definite reaction set in. And even at this date twenty-two schools in fifteen states, of which a majority were in the South, continued to be thus privileged.

In this controversy, the arguments advanced against the exemption of law school graduates from the regular bar examinations can be passed over briefly, for the reason that their force is generally recognized to-day. There was in the first place the argument on principle, that the state ought not to lose control over so important a part of its functions as admission to the bar. In the language of Delafield, "examinations

uates of the full three-year course who had passed the Board preliminary examination and also an examination in Latin), 1889.

Illinois (any local institution whose course covered two years of thirty-six weeks), 1875. Three law schools at this date; six by 1890.

Alabama (University), 1876.

California (Hastings), 1878. The privilege was subject to the right of the Chief Justice to order an examination.

South Carolina (University), 1886.

West Virginia (University), by statute, 1887.

Minnesota (University), 1889.

[1] "That the diploma granted to those pursuing successfully the studies of such a course [one normally covering three years] and passing such full and fair written and oral examination as may be satisfactory both to the faculty of the school and to the proper authorities of the state, ought to entitle the recipient to admission to the Bar as an attorney at law."

It was clear from the discussion on the floor, this and the preceding year, that it was impossible to put through a resolution that meant anything.

[2] It was rumored recently that a certain Supreme Court judge of a western state, who was shortly to come up for reëlection, first induced his colleagues to grant the diploma privilege to a certain school on the ground that his presence on the faculty was evidence of its high standards; then induced the Court to extend the privilege to two other schools, on the ground that otherwise he would be charged with discriminating in favor of his own institution.

for public office should be conducted by public officers."[1] The retort sometimes made that state university law schools, at least, may be considered organs of the state, is on the whole a quibble. The decisive argument, however, was and is that the absence of responsibility to some external authority is bad for the schools themselves. This fact, which Minor had early recognized,[2] is patent to any one who has visited a large number of law schools. It is apparent even in schools which, because they have virtually a local monopoly of legal education, are under no pressure to reduce their standards. It takes here the form of a certain listlessness. The teachers are tempted to sink into that condition of uninspired placidity which is only too characteristic of many American college professors. That law teachers, as a class, move on a higher plane of efficiency than their colleagues in the colleges of liberal arts is undoubtedly attributable in part to their greater measure of accountability. When to this fact is added the further one that it is difficult to prevent the diploma privilege, once granted to a good school, from being extended to any school that may subsequently be started in the state, complete demoralization of the bar is threatened. There can be little question but that Delafield was correct in describing these privileges in New York in his own day as affording "a short cut to the bar through golden gates." There can be no question but that in our own day they have been scandalously abused in several states. Except as a tentative arrangement, pending the time when a satisfactory system can be devised, the diploma privilege cannot be defended.

Of more interest to-day, because based on truths that are less commonly accepted, were the arguments advanced by schoolmen against entrusting the bar examining function to an independent body of practitioners. Dwight, writing in 1889,[3] explained the reasons which had induced his original appeal to the legislature thirty years before, as follows:

> "It was determined at an early day that it was wise to confine the attention of the students mainly to the principles of the law, paying comparatively little attention to the details of local practice. There was, however, a formidable obstacle in the way of this course. The examiners appointed by the court practically paid no attention to legal principles. . . . If one Board favored theoretical study, the next adopted a different view and confined all their enquiries to trivial and useless details."

[1] *Report of the Committee on Admissions to the Bar*, p. 23.

[2] See above, page 250.

[3] 1 *Green Bag*, 141.

Referring to the situation at the time of writing, when he had lost the diploma privilege, he added:

> "The court examinations are more reasonable, though, be it said with respect, there is still in some quarters room for improvement."

One of Dwight's successors in the Columbia deanship has expressed similar views in regard to the neglect of legal principles, the over-emphasis of trivial details, the general room for improvement in more recent New York bar examinations. There is a continuous tradition of friction between the Columbia law school authorities and the independent examining authorities of the state. The controversy has often been extended to include other schools as well. The rights and wrongs of the discussion are of less importance, in this connection, than is the evident fact that in the leading state in the Union, for whatever reason, and whoever may be to blame, the examiners and certain of the law schools tend to pursue virtually antagonistic ends. The system has bred turmoil instead of coöperation in the advancement of legal education.

Such is the argument of experience, which of course is not conclusive. Vigorous controversy is after all more healthy than supine acquiescence, and it is open to either controversialist to declare that the remedying of some minor defect will make the system work well—work, in other words, to produce results that will satisfy the victor. Langdell, however, in his protest already quoted, went to the heart of the matter. He advanced the following powerful argument to show, not that existing bar examinations were bad, but that there was that in the nature of American law which would always prevent them from being good, unless they were keyed to some particular course of study or instruction. He first distinguishes American law from other branches of knowledge, which, he implies, lend themselves more readily to examination methods.

> "Law has not the demonstrative certainty of mathematics; nor does one's knowledge of it admit as many simple and easy tests, as in the case of a dead or foreign language; nor does it acknowledge truth as its ultimate test and standard, like natural science; nor is our law embodied in a written text, which is to be studied and expounded, as is the case with the Roman law and with some foreign systems."

Of especial significance, in connection with the task the Harvard law

school was attempting to perform for American law, and for which it demanded only "a free field and no favors," is the next sentence:

> "Finally, our law has not any long established and generally recognized traditions, which will indicate to the examiner what his examination ought to be, and to the student what it will be; and the whole field of law is so extensive, and so much of it is unfit for the purpose of systematic study and instruction, that one who attempts to cultivate the whole of it indiscriminately will not cultivate any of it to much purpose."

Hence, he concludes, the examiner who examines without reference to any particular course of study or instruction

> ". . . can have no other standard than the state of his own knowledge; and the success of the persons examined may therefore depend less upon what they know than upon what the examiner knows. It is impossible that such examinations should be at once rigorous and just. They must admit the undeserving or reject the deserving; and in the long run they will be sure to do the former."

In this last sentence Langdell revealed himself a seer. The reason why friction between schoolmen and examining boards has not developed oftener than it has is that few boards, outside of New York, have had the backbone to stand up for a "tradition of the law"—in the judgment of the present writer a valuable but one-sided tradition of the law—differing from a perhaps even more valuable, but equally incomplete, tradition that powerful law schools seek to establish. The sure way of avoiding trouble, when faced with the impossible task of devising a uniform test for students trained in divers ways,[1] is to let everybody through. A rejected applicant may have influential connections who can bring pressure to bear upon the Board, but no one

[1] Langdell, as we have seen (page 92), argued in favor of a recognized distinction between counsellors or advocates and attorneys, on the basis of their different methods of training. After it was clear, however, that New England bar examinations were to be administered in such a way that Harvard law school graduates would not be penalized, he did not press the point. He doubtless considered that the gradually recognized professional distinction between Harvard law school graduates and products of other systems was sufficient for all practical purposes.

To the practitioners, on the other hand, uniformity of standards was a fetish, and in particular any distinction between school-trained and other lawyers the root of all evil. Compare Delafield: "There should be one standard and one rule, applicable to all alike" (*Report*, p. 28), and Wellman: "So long as the law school privilege continue in any state, there can be no uniform standard of knowledge required throughout that state; and this we have seen to be the very cornerstone of a proper system of legal education." (15 *American Law Review*, 321.)

is specially interested in criticizing it for undue leniency. The *in terrorem* effect of an examination will always remain, and in any fair statement of the case must not be overlooked. But except for this, independently conducted bar examinations have rarely amounted to much. States which have abolished the diploma privilege have the doctrinaire satisfaction of being theoretically paramount to the schools, but their examinations are of little avail in helping or forcing the schools to maintain high standards.[1]

To sum up the controversy in regard to this matter of examinations for law school graduates: It is clearer to us now than it could have been to interested controversialists of that day, that both parties were right in attacking the position assumed by their opponents, and that both were wrong in regarding their own as the only possible alternative. The suggestion that local bar examiners and certain national law schools might be pursuing different ends, each valuable in itself, was only rarely and hesitantly put forth by the schools, which prevailingly sought to defend their standards against interference, on the ground that academic freedom constituted the best possible means of preparation for an undivided profession. The propriety of double standards, on any grounds at all, was indignantly repudiated by the profession. Still another possibility—that even in an undivided profession the examining authority might be located neither in the individual school nor in an independent practitioners' board, but in a general examining board maintained by an association of schools—occurred to no one. Instead, one of the two obvious alternatives was adopted, with about equally unfortunate results. There is little to choose, on principle, between a law school that is responsible only to itself, and a board of examiners that pretends to greater powers of discrimination than it possesses; and in their practical working out there is not much difference between the two systems.

[1] A subordinate reason for the prevailing inadequacy of bar examinations is that the examiners, left by the schools to devise their own methods, are rarely able to construct a system that an expert crammer cannot "beat." For the rapid degradation of the Massachusetts board examinations, see 14 *American Law Review* (1880), 76; and note the English development of cram schools for solicitors' and civil service examinations.

PART VI

EFFORTS TO BROADEN THE TRAINING OF LAWYERS DURING THE FIRST QUARTER CENTURY AFTER THE CIVIL WAR

CHAPTER XXIII

PURPOSE AND CONTENT OF LEGAL EDUCATION

1. *Vitality of Legal Education between 1865 and 1890*

IN spite of the blind formalism and inglorious compromises which have been described, the first quarter century after the Civil War was a period of vital growth for law schools. It contrasted sharply both with the preceding and with the following generation. The technical changes in our admission methods, length of degree course and recognition of school work by the state, however ill-advised in some of their details, sprang from a general desire, on the part of both practitioners and schoolmen, to make legal education better than it had been before; and while there was much disagreement as to what reforms were most needed, and reformers, as usual, got in one another's way, substantial progress was none the less made in several directions. Looking back at this period, we can see that if there had been some central regulating influence, in place of the well-meaning but sadly ineffective agglomeration of bar associations, the progress would have been more rapid. Yet even so, in the long run it has probably been an advantage to the schools to be permitted to develop, as it were, spontaneously. The tradition of a standardized unitary profession, monopolizing all branches of legal practice, was so firmly implanted in professional thought, that an inelastic educational system, artificially simplified like the German, instead of diversified like the English and French, might have arisen to plague us in later years. As it was, although every law school considered its neighbor as its natural competitor in pursuit of a common aim, and regarded any difference from its own policy as a difference in merit rather than a difference in type, no single institution was strong enough to impose its views upon the rest. Each developed along the path that seemed best to it.

Formalism still operated, it is true, even among the schools. Devices invented by one institution were often adopted by another as parts of the formula of a perfect law school, without much thought as to whether they were appropriate to its own particular circumstances and fundamental ideals. Yet sometimes they were appropriate. Each school profited more by the results of free initiative among all than it would have gained from the *a priori* principles of a group of professional leaders. And when perfectly foolish things were attempted—such as, for

instance, to use an illustration belonging properly to a later period, the introduction of the Harvard case method into night schools—the resultant uniformity was necessarily more ostensible than real. The schools, as they endeavored to improve themselves, perforce grew apart. In place of the prevailingly uniform feebleness that had characterized all schools before the war, a vigorous differentiation began to appear. This process had not been carried far enough by 1890 to make it possible to classify the schools in any satisfactory way. Harvard, as we shall see, had come to represent at this date a pretty clearly defined type of its own. Among the other schools, efforts to revive office connections, or to cater to self-supporting students, or to broaden the curriculum produced as yet shifts of emphasis rather than sharp dividing lines. Independent traditions were being started, however, some of which would become accentuated and crystallized during the generation between 1890 and the German War. The inherent tendency of human institutions to become different from one another was proving stronger than the conscious effort to make them more closely alike. What must have seemed to many of the participants a losing fight to establish their particular conception of legal education as the orthodox one was really preparing the ground for recognition of the truth that a single standard type of law school does not and should not exist—that we have, and need, law schools of entirely different types, each contributing in its own way to the development of radically different types of lawyers.

The obvious deficiencies of legal education prior to the Civil War may be conveniently grouped under three main heads: lack of breadth, lack of depth, lack of force. The current had been narrow, shallow and sluggish. Enough has already been said as to the change that occurred in this last respect. In New York, in particular, we have seen[1] that the increased head of pressure emanating from the practitioners, and greatly swelling their tributary to the gentle law school stream, produced a torrent that was both turbulent and muddy. It remains to enquire in what respects legal education stood most manifestly in need of improvement as regards its breadth and its depth, and what steps, more successful than those already described, were taken to remedy these failings.

And first, as to efforts made to broaden the course of training.

[1] Pages 259–263.

2. *Breadth* versus *Depth. General Discussion*

By the term "curriculum," as used in this chapter, is meant the entire course of formal training received by the prospective lawyer, whether in the law school, the law office, the college or the lower schools. By the term "breadth," as applied to this training, is meant the extent to which the manifold subjects of study, or phases of training, that might conceivably be included in the curriculum, are included as a matter of fact. Care must be taken not to identify breadth with merit. Our system of legal education operated under conditions over which it had little control. Within a limited number of years it had to accomplish an extremely difficult task—that of initiating the student into the mysteries of a huge and ill-digested mass of law, to be applied by him under complicated and arbitrary rules and customs of procedure. Under these conditions it was a question of judgment where to draw the line between, on the one hand, a course of training so broad as to be superficial and useless for any practical purpose, however remote, and, on the other hand, a more thorough but lopsided course which should omit essential features. This dilemma still confronts us and cannot be escaped merely by an increase in the preparatory work demanded of the student. For just as in our large cities the building of new arteries of transportation is at once overtaken by the growth of population and the congestion of traffic is as great as before, so the pressure upon schools and students defies all attempts to provide other than temporary relief. The lengthening of the law school or bar admission period since 1870 has in no way kept pace with the growth of the law that has to be mastered. While a still further extension of the preparatory period, coupled with specialization on the part of the schools, will reduce the tension to some extent, and ultimately, it is to be hoped, the law itself can be reduced to more general and hence more easily mastered terms, it will be many years before any law school faculty or any board of bar examiners or court can defend its curriculum as an ideal one. All that can be maintained is that it is the best that can be devised under most unfavorable conditions.

This situation makes for a great variety of curricula as between school and school. Not merely have the conflicting claims of breadth and of thoroughness been reconciled by different schools in different ways, but the temperamentally broad-minded, as distinguished from thorough-minded, teachers have by no means been in accord among themselves. Much difference of opinion developed as to what particu-

lar broadenings of the curriculum might most profitably be attempted, in view of the fact that time devoted to any one desirable feature necessarily reduced the time available for some other. While noting these disagreements, however, the reader must be careful not to exaggerate their importance. Two facts should be borne in mind. One is that the task of coping with the volume of judicial decisions was now definitely established as the main function of every law school. This was accepted by all, whether they brought their students into direct contact with the cases or whether they simplified the instruction, both for themselves and for the class, by relying upon textbooks or lectures. The question at issue was not whether the school should depart from what had become its primary mission, but whether, to some relatively small extent, it should do more than this, and if so, what. And the second fact is that, however jealously a faculty might guard its students against unwise diffusion of effort, there was pretty general agreement that the extreme narrowness of the ante-bellum curriculum could not be defended. The old unregulated competition between school and school, between school and office, between even a law school and the college to which it was attached, had led the schools to attempt only the satisfaction of the practitioners' obvious and immediate needs. Only the financial weaklings were content to remain in this position of letting the ignorant dictate to them the requirements for their degree. While all schools, therefore, continued to devote themselves mainly to case law, there was also a general tendency to broaden the student's education.

3. *The Three Component Parts of an Ideally Complete Preparation: Practical Training, Theoretical Knowledge of the Law, General Education*

A brief analysis of the fundamental problem confronting the schools will reveal the many different directions in which the curriculum was capable of expansion and will throw light upon the varying policies pursued. The overwhelming majority of students, then as now, frequented law schools, and came up for bar examinations, with the intention of actually practicing law in some particular jurisdiction. A few cherished the intention of becoming teachers or scholars, or studied law as an elegant accomplishment, or as an aid in administering their private fortunes, or as an introduction to a political career, or as an anchor to windward in case no better opportunity of earning a livelihood presented itself. But these were quite submerged in the general mass. The

main purpose for which all professional law schools existed was to train practitioners of private law. They were successful in securing and holding students only in so far as they could show that the training represented by their degree was of value for this purpose. This being the end for which they existed, the problem was then to devise the appropriate means. The schools were not in a position to establish the completion of their course as an end in itself. They must, under penalty of their own extinction, furnish the future practitioner, if not with everything he would like to have, at least with more than he could secure in other ways. If they could not satisfy all his demands, they must at least convince him that such portions of an ideally complete training as they failed to provide were non-essentials that he could ignore or make up in other ways, and that such training as they did provide was directly related to his own object in attending the law school. All beginners naturally tend to overestimate the importance of training that obviously and immediately assists them in their chosen work, and to question the utility of studies whose practical application is more remote. It is the besetting danger of all institutionalized education that its authorities, on the contrary, are tempted to become interested in the remote at the expense of the near, and thus to create a system of education that is out of touch with realities. An absolutely complete course of training would, of course, include every subject and every phase of training that could be justified from either of these points of view, as tending in any way to be of value to the student. A system of professional legal education constructed in conformity with this impossible ideal would include comprehensive training under the following three heads, arranged in the order in which they naturally appeal to the uninstructed beginner.

First, the training must be, primarily and fundamentally, a training in and for legal practice as such, and not a training that provides the student merely with theoretical acquisitions that he may be unable to turn to practical account. Its object must be to develop skill or discipline, as distinguished from information or knowledge.

Second, it must give the student such a mastery of theoretical legal knowledge as may ultimately in any way assist him to attain the object in view. And to this end, not merely must a large part of the law that he intends to practice be acquired by him first as a body of systematized legal doctrines rather than picked up in a practical or empirical way, but law itself must not be narrowly defined. Borderland and al-

lied studies of a relatively non-technical nature, such as jurisprudence and government, must be included.

Third, it must include education or training in all such additional sciences or arts as cannot be brought within any definition of law, however broad, and yet may be helpful to the prospective lawyer in any way. Here belong not merely medicine for use in personal injury cases, science for use in patent cases, and any subject of study that promotes the accuracy of reasoning and the effectiveness of expression that are so essential in the practice of the law. Here belong also studies that have no practical application to a lawyer's professional work and yet may contribute to make of him a better citizen and a happier individual.

These three phases are or may be involved in the system of training that is instituted for any elaborated art or profession. The order in which the student enters upon them is the reverse of the order in which they are stated here. While he is naturally most interested in those portions of his possible education that stand nearest to the end he has in view, the school persuades him to precede these with studies of more remote utility. The problem that confronts the legal educator in devising his curriculum is to decide, in the first place, to what extent it is advisable even to try to divert students from their natural bent. To this end he must determine, both how much theoretical learning ought to be shoved in ahead of practice, and how much of this learning should be of a technical and how much of a general sort. And then, when he has decided what he would like to do, he has the further unpleasant task of adapting his desires to conditions as they are, and deciding which portions of his ideal curriculum will have to be slurred over or omitted.

There are those who refuse to recognize the existence of these three distinct phases of vocational education. They contend, with some plausibility, that there is no substantial justification for thus isolating theory as an independent and preliminary body of learning, to be subsequently "applied"—that the theory of any art is merely an academic sediment, deposited when the educational waters are standing still—that when they are in vigorous movement theory is wholly absorbed in practice, and a student does not try to know, but only to do—in short, that it is a totally false analysis of educational processes to allow to theory any place in a vocational curriculum. Even if this were a true statement of the problem from the idealistic point of view, theory occupies, as a matter of fact, the principal part of existing curricula. It has to be reckoned with, even if it ought to be abolished. It seems more probable that it is

there because it has to be—that just as out of legal procedure the concept of a substantive law, of which procedure is only the application, was slowly evolved, so any system of training that has reached such a degree of elaborateness as properly to be conducted by an institution, instead of by a master of the craft, must necessarily contain an element of theory, divorced from practice. The kernel of truth, in the contention that the teaching of the theory of an intricate art is a mere academic abuse, is that the attempt to theorize on the principles which underlie a practitioner's manifold activities may easily be carried too far. To the extent that it is practicable to train a student directly to do things, it is certainly futile to set up systematic principles for him to learn. It is always a roundabout and cumbersome method of securing the practical expertness we have in view to force him to make deductive applications of laboriously mastered knowledge. So far from attempting to give him as much as possible in theoretical form, we ought to reduce this part of his education to the smallest possible proportions. Unfortunately, however, in a difficult and complicated profession, much of the training has to consist of theory, or both instructor and student will be lost in a hopeless maze. While, therefore, the theoretical element in education is not sharply distinguished from practical training as an essential foundation upon which the other rests—while it should be pictured rather as a body of learning that gradually assumes form within the educational process as a whole—while its outline, in short, is necessarily vague and fluctuating—it has none the less reality on this account. Similarly, the precise line of division between that part of this theoretical knowledge which is useful only to lawyers and that which is useful to others as well—between technical and general knowledge, in other words—is also not always easy to draw. Human phenomena are not distinguished from one another with the logical severity of a diagram. This, however, is no reason for denying distinctions that are derived from logically distinguishable starting-points. Probably from the idealistic point of view, and certainly in our existing scheme of educational organization, practical training, technical knowledge and general education each has its different subordinate aim, and each its appropriate machinery for fulfilling this aim. All have their place in a fully developed curriculum, designed to prepare for an elaborate art or profession.

In the case of a simple and easily mastered vocation, so much machinery is not necessary. For an extremely simple occupation only practical training under a master craftsman is required. It is only as the

occupation grows more complex that technical theory and general education must be introduced, and still, for a time, all three phases of the preparation can be handled by one and the same organization. A further stage in the upbuilding of a complex educational process is reached when, for the better adjustment of means to the end in view, the organization itself must be split, and responsibility for the fulfilment of these three distinct aims is distributed among three distinct centres of organized activity. These centres in legal education are first, the law office, or such other centres of active professional work as may arise. If practical training in the law is to be conducted under conditions resembling actual practice, it must be through coöperation between the schools and these outside agencies. A second centre is the law school itself. Whatever may be attempted in the way of providing practical training under academic conditions, the special function of a law school is to provide, if not adequate theoretical knowledge of the law, then at least the training which will enable students subsequently to acquire this knowledge for themselves.[1] Incidental to the discharge of this function, the school must decide which portions of the law may best be taught by methods appropriate to it, and which may better be left to the practitioners' centres. The third centre is the mechanism of lower schools and colleges, upon which the responsibility for general education is properly thrown. Incidental to this the law schools and the colleges must determine the boundary line where "law" ends and general education begins, so that each may concentrate upon its appropriate share of the common burden. Each of the three centres is naturally disposed to magnify the importance of its own special contribution to the task of devising a complete and well-rounded preparation for the bar. Each is disposed to imagine that if it does its own job well, it does not matter so much what occurs in the other two phases. Each therefore is disposed to bring as much as possible of the entire educational process under its own control, even though this be at the expense of other phases of training equally valuable for the student. The final stage in educational development is attained when the three centres learn to coöperate instead of to compete. A single larger organization, the several parts of which are mutually supporting in a spirit of subordination to the common whole, is the goal toward which American legal education is moving.

[1] For the limited sense in which training conducted with this object in view may itself be termed "practical," see below, page 285.

CHAPTER XXIV

INADEQUATE PROVISION FOR PRACTICAL TRAINING

THE failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly. The change from the law office to the law school as the predominant factor in preparation for the bar—the transition, in other words, from the apprenticeship to the institutional stage of educational development—occurred earlier in medicine, and little later in engineering, than in law. Yet there is nothing in American legal education that corresponds in any way with the elaborate clinical facilities or shopwork provided by modern medical and engineering schools. Nor, so far as the writer is aware, is there any foreign country in which education for the practice of the law is so largely theoretical as it is in America.[1]

Three causes seem to have combined to produce this curious result. In the first place, the growing complexity of American law, which is in far worse plight in this respect than that of any other country, began to make its influence felt just at the time when the democratic reaction against long periods of training was at its strongest. In itself this complexity tended merely to force students to supplement their practical office training by theoretical work in a school. Coming at the time it did, however, its effect was to squeeze the office out entirely. For as the difficulty of mastering the theory increased, and it remained impossible to extend the period of training to correspond, that phase of legal education which could most easily be spared had to be slighted or given up. Even apart from the natural tendency of all institutional teachers to exaggerate the value of theoretical or closet as against practical work, it is undeniable that the need of practical training in

[1] The reader is cautioned not to be misled by the many ambiguities latent in the terms "practice" and "practical." Our American universities are much more "practical" than those of England and Continental Europe, in the sense that they devote themselves primarily to training practitioners, and only incidentally to developing legal scholarship. In the process of establishing their predominance in this vocational field, however, the schools maintained by these universities have crowded out outside agencies, in which practical training, as distinguished from theoretical knowledge of value to practitioners, might be secured. Obliged to fight for their existence against the older law offices, they have, with few exceptions, discouraged the rise or survival of anything corresponding to English "reading in chambers," or articled clerkships, or similar French and German institutions that supplement the necessarily theoretical school work.

the application of one's theoretical acquirements is not so absolutely imperative in law as, for instance, in medicine. Except possibly in murder trials, young lawyers at least do not kill their clients by their mistakes. Law practice is itself, much more than either medicine or engineering, a closet pursuit. The need for quick decision, without opportunity to consult authorities, arises less often. And however much of a handicap it may be to a young lawyer to find himself utterly incompetent to apply his knowledge when, upon admission to the bar, his formal education is supposed to be complete, still if he has any aptitude for his profession he can and does pick up the things he has yet to learn. It constitutes a serious defect in legal education that he should be thrust thus helpless into active practice; but it would be much more serious if superficial expertness were assured at the expense of more vital matters.[1]

Since American law has never stopped growing in difficulty, this cause operates to-day almost, if not quite, as strongly as it ever did. It still remains a matter of judgment, which is decided differently by different schools, whether it is worth while even to try to take time from theory to devote to practice. But furthermore, even those law teachers or bar examiners who recognize the need of additional practical training are confronted with another difficulty, that does not beset members of other professions to anything like the same extent. This is the difficulty of securing objects upon which their students may practice. The engineer deals very largely with things. If the student cannot be given a gang of real laborers to boss, at least he can triangulate a genuine field. The law student on the other hand can do little that approximates the conditions of actual practice until he is brought into touch with an authentic client. In this respect he resembles the medical student, who must have real patients to practice upon. But here again the legal profession suffers from the fact that, until quite recently, it has conspicuously failed to support charitable institutions in which a varied assortment of patients may be secured. "Legal aid" has just begun to develop supply centres analogous to hospitals and dispensaries, and with which similar connections may be arranged. In

[1] For this reason the opposite extreme from a purely theoretical law school course — namely, a course of preparation pursued entirely in a law office — finds few defenders to-day. However shallow may be the theoretical knowledge imparted by the weakest night school, if it is sufficient to satisfy the student — who is not easily imposed upon by a merely fraudulent institution — it at least constitutes a better preparation for practice than the haphazard empiricism of an office.

the past the profession, through its backwardness in performing community service, has stunted its own development. For not only has the number of clients upon whom educational experiments might be tried been kept relatively small, but those that exist have been relegated to the private law office.

Now, broadly speaking, private law offices do not want law students and law students do not want them. The offices, once glad enough, when the demand for legal work exceeded the supply of workers, to take in untrained beginners, can now, through the night schools, secure clerks who are much better qualified to do their work and who possess the privilege of admission to the courts as well. The throwing open of the bar and of the schools to women, after the Civil War, increased this possibility.[1] This practical exclusion of students from any except a formal connection with law offices is the less to be regretted for the reason that, with the present tendency toward specialization in law practice, few offices could provide a student with experience that would be of much value to him save in one narrow and not always commendable rut. If he escaped the atmosphere of the ambulance chaser, he would be likely to become a corporation slave. We have already seen[2] that attempts were made by practitioners during this period to revive the old law office connection, in two alternative ways: by adding a definite period of preparation, to be devoted exclusively to office work, as under the original Harvard plan; or by founding law schools designed to interlock with the office during the entire period, on the English model. Both attempts failed, for the reason that they were based upon pleasant memories of what once had been, rather than upon a frank facing of facts as they then were or were shortly to become. The independent law office that supplied to its students not only general training but also the fine ethical traditions of the older bar has, at least in our larger cities, disappeared, apparently beyond hope of resurrection.[3]

[1] Space does not permit an account of this movement, which has produced much less momentous results than were anticipated by either its advocates or its opponents. At present women are admitted to the bar of every state and to most important law schools, except Harvard and Columbia. In 1910 the census reported only 558 women lawyers. In 1915-16 the U. S. Commissioner of Education reported only 687 women law students. There were 9015 women physicians and 662 women medical students at the same dates. See Doerschuk, Beatrice, *Women in the Law*, 1920.

[2] Page 260; and compare below, pages 399-400.

[3] For an attractive picture of student days in a Philadelphia law office, in the middle of the century, see "John Cadwalader's Office," in Law Association of Philadelphia, *Centennial Addresses*, pp. 366-374.

Finally, the strongest universities, as we shall see in the next chapter, were disposed to cut off even their theoretical instruction before it had reached that point of detailed concreteness that made it capable of being immediately applied. They were not merely content to leave the student at the edge of local practice,[1] to leap across as best he might. They did not even carry him quite up to this edge. In such schools the failure to train students in the actual practice of the law was not a regrettable omission, forced upon them by external considerations. Rather it was an item in their general policy, determined by their conception of what their mission in legal education really was. Having thus no occasion to devise a system of practical training for their own students, they provided also no model for other schools to follow.

Such being the underlying conditions, the record of progress in this direction was a blank—unless it be a form of progress to learn, through failure, that the curriculum cannot be expanded on the practical side so long as the active practitioner fails to provide facilities for this expansion. In place of contact with real clients and their problems, the schools could do no more than continue that spurious sort of practical training which is represented by moot courts and by drill in the drafting of written instruments. From the very beginning, all schools had included this first feature in their curriculum, and several had included the second.[2] Work of this sort interests the student, both because it adds variety to his studies, and because it seems to him more closely to resemble what he will be called upon to do in actual practice than the mere mastering of theory. What he does in these highly specialized courses, however, constitutes only a very small fraction of the activities in which, as a practicing lawyer, he will engage; and the tasks are so artificially simplified and rest upon such an unreal state of facts that it is doubtful whether the time devoted to them is justified. Granting that they are of some benefit to the student, a genuine prac-

[1] The reader will again not confuse the term "practice" as here used to denote the entire activities of a practitioner, with "practice" in its purely technical sense of a subdivision of the law of procedure. Nor will he confuse the distinction that legal theorists have evolved between substantive and procedural law, with the distinction between theoretical and practical training. The substantive law lends itself to theoretical treatment more readily than does procedural law. The groundwork of the former is a little more apt to be taught in the form of principles systematized in books, the latter may be more safely left to be picked up in practice. Portions of the procedural law are, however, taught theoretically by many law schools to-day; and all law was originally taught by the practical, or empirical, law office method.

[2] So Harvard, under the Story régime.

tice course, dealing with real clients, would do all that they accomplish and a great deal more. The continued attempt by the schools to do this sort of work themselves indicated merely that they had not dropped practical training from their ideal of what a complete course of legal training ought to include. It did not mean that they were in any adequate way remedying the defect forced upon them by the absence of outside agencies with which they could effectively coöperate.

A similar verdict must be passed upon the alleged "practical" value of the case method of teaching, originated at the beginning of this period by Dean Langdell of Harvard, and extended, during the period following, to many other schools. Postponing to a later chapter consideration of the efficacy of this method, as a means for enabling a student to acquire, during his student days or subsequently, a theoretical knowledge of the law,[1] it should be noted, as one of the reasons for the success of the method, that the practice of the law is not by any means to be pictured as the application of well-settled legal principles to a simple state of facts. The practitioner's work includes this practical application of his knowledge, it is true; but it also consists, in large measure, of disentangling from a complicated state of facts the real issue, and then laboriously finding what the law, that affects his client's rights, is or ought to be. Any training that the student secures from his school that will assist him in performing this important part of a practicing lawyer's activities is undeniably practical training, in the same sense that training in arguing motions before a moot court or in drafting written instruments is practical. Now, since the case method, very effectively, does precisely this, it rightly claims, as one of its chief merits, that it is practical, to an extent that the dogmatic method of teaching is not; that students, who are encouraged by it to discover the law for themselves, are engaged in an activity much more closely resembling what in their later practice they will be called upon to do, than are students who simply absorb knowledge from a teacher.[2] The fact that the case method, however, better than the dogmatic method, trains the student in this one out of the many activities in which he will later engage, by no means closes the gap that divides the theoreti-

[1] See below, Chapter XXXI, pages 369 ff.

[2] The discovery that the case method, originally proclaimed as the only sound method of inculcating the theory or science of the law, possesses also a practical value for the practitioner, is of comparatively modern origin. See Redlich, *Case Method in American Law Schools*, pp. 23-25; and compare Professor Williston's brief statement of the reasons for its success, in 29 *Harvard Law Review* (1916), 563.

cal law school from the realities of actual practice, any more than the existence of a moot court suffices to make a dogmatic school practical.

It is impossible for any law school to duplicate within its own walls the conditions of outside life. Its own work must always be primarily theoretical. A line or gap between its work and genuinely practical training is inevitable. Unless or until the law school can find outside agencies, to whom it can delegate this part of its present responsibilities, the best it can do is to throw little bridges across, which reach practice, as it were, at various special points. It so happens that the schools which have committed themselves most unreservedly to the case method are precisely those schools[1] in which there is the widest gap between the instruction as a whole and the immediate requirements of the local practitioner. Against this must be set the fact that the case method bridge is less flimsy than some other devices, and leads to a particularly important practical end. It by no means solves the problem, however, of providing an all-round training for the legal profession.

One solution of this difficult problem that has recently been suggested is that legal aid societies may so expand their offices that ultimately they will be able to play that part in our educational process for which the private law office is no longer fitted.[2] A discussion of the pros and cons of this proposal, and of the experiments in this direction already started by several schools, would be outside the scope of the present Bulletin. In general it may be said that the objections urged against the idea concern rather its practicability than its inherent value. In the judgment of the writer, the movement is too promising a one to be disregarded in any comprehensive view of the subject. The question of practicability can best be settled by the actual experience of particular law schools and particular legal aid societies which, sincerely agreeing as to the possibility of coöperation, aim in this spirit to work out a mutually advantageous plan. Pending the result of such experiments, the more conservative schools and practitioners would do well to avoid such steps as might later make it more difficult for them to introduce a reform of proven worth. To this end, the question whether a supplementary period of office work should be required of

[1] The "national" law schools. Compare the following chapter, and page 412.

[2] See especially Rowe, William V., "Legal Clinic and Better Trained Lawyers — A Necessity," 11 *Illinois Law Review* (1917), 591–618; Wigmore, John H., "The Legal Clinic," 12 *idem* (1917), 35–38; Rowe, "The People's Law Bureau," 15 *idem* (1921), 424–436.

all applicants for admission to the bar should not be answered in the negative, simply because the training secured by most office students, under present conditions, does them little good. The importance of bringing theoretically educated students into contact with genuine practice is such that, as a matter of principle, this general requirement might well be insisted upon, and its admitted inadequacy be made a ground, not for opposing it, but for trying to make it better.[1]

[1] For a comprehensive discussion of Legal Aid Societies and their possibilities of development, see Smith, Reginald Heber, *Justice and the Poor*, Carnegie Foundation Bulletin Number Thirteen, 1919.

CHAPTER XXV

THE FIELD OF LEGAL KNOWLEDGE

THE development of the theoretical portion of the curriculum will be discussed in this chapter only in its broader phases. These are, in the order of their direct appeal to the would-be practitioner: the law of the local jurisdiction; the remainder of the technical law as administered by the courts; and borderland or quasi-academic studies, such as international law, jurisprudence, government, etc. In Chapter XXVI the mechanical adjustments necessitated by the attempt to squeeze an increasing amount of work into a limited number of years will be considered.

1. *The Law of the Local Jurisdiction*

The law that a lawyer "practices" or applies in any particular case is always the law in force in a particular jurisdiction; and since the American Union is composed of forty-nine local jurisdictions, each of which, subject to the restrictions of the federal constitution, controls its own political and legal development, it follows that "American law," regarded purely as a body of rules enforced by the courts, is merely a general or generic term. Our law in the concrete is a system composed of forty-nine independent bodies.

Powerful forces are at work, it is true, that encourage the formation of a uniform type. The pressure exerted by the federal organization from above is only one, and by no means the most important, of these forces. Because of our common origin, our common history and our common language, our state lawmakers (using this term in its broadest sense) habitually borrow from other jurisdictions whatever they consider applicable to their local needs. The framers of state constitutions and of statutes to a large extent merely copy or adapt, rather than take the time and run the risk involved in attempting to formulate original creations of their own. Furthermore, a very large part of the law of any jurisdiction has never been enacted by a legislature in statutory form. It exists only in the shape of scattered legal principles, stated or implied in judicial decisions as the grounds upon which these decisions rest. Many of these principles were enunciated by the English courts prior to the Revolution, or have been accepted as authoritative by so many jurisdictions and textbook writers since then, that, ex-

cept as modified by statutes, they are now regarded as settled for the entire country. The judges of each state consider themselves bound by any such principle of our "common" law,[1] even if no case involving its application happens ever to have arisen in their particular jurisdiction. Similarly, in the numerous questions that arise involving the interpretation of ambiguously worded statutes, or the reconciliation of statutes with constitutional provisions, the judges are in the habit of paying great respect to the conclusions reached by the courts of other states in passing on similar problems.

The influence of this spirit of legislative and judicial comity cannot, however, do more than mitigate the tendency toward diversity that is inherent in our political structure. At best it can produce only an ideal standard of law, to which the separate jurisdictions, each at its own discretion, conform. There will be leaders and there will be laggards in the introduction of statutory change; and while, in the absence of such change, the well-settled principles of the common law are supposed to be in force in every jurisdiction, it is not always easy to determine, out of the vast number of principles that have been enunciated or glimpsed, which are the ones that may now be considered as settled. As to many points, therefore, courts as well as legislatures disagree, partly because the law is in a continual process of development that proceeds unevenly in different states, partly because it is so complex that the judges are themselves lost in the morass of their own decisions.[2] In a general way the divergencies among our forty-nine bodies of law may be said to be less marked than the resemblances, but there cannot be absolute identity as between state and state. The forest contains only oaks, but each tree differs from every other.

[1] One of the most astonishing deficiencies in the education provided by our lower schools is its general failure to make clear the meaning of such an elementary and basic feature of our political system as the "common law." It ought not to be necessary to have to warn the lay reader that the paramount body of federal law, although in a sense "common" to all jurisdictions, is entirely distinct from that unenacted law the mastery of which constitutes the principal occupation of the practitioner and the principal object of study in law schools. Although this confused mass of judicial precedents—some of them applicable to all jurisdictions, some to only a few jurisdictions, some peculiar to a single jurisdiction, some entirely obsolete—is gradually being displaced or absorbed by statutes or constitutional provisions, both state and federal, it still constitutes the principal source of those legal principles that govern private relations, and is what is meant by the phrase "common law."

[2] To these general and more or less fortuitous variations in the laws of the several states must of course be added more permanent differences grounded in economic considerations: the high development of commercial law in New York, of the law of mining and of water rights in California and Colorado, etc.

This diversity of subject-matter, which affects procedural law most markedly, but substantive law likewise to no small extent, raises a problem in legal education which can be solved by any particular school in one of three ways. The simplest solution — the one that most naturally commends itself to possible students, and the one that is likely to be adopted when the great majority of students, present and prospective, intend to practice in one particular jurisdiction — is to focus the instruction from the beginning upon the law of that state, and to continue it down even into the fine points of this law. If the sole end and aim of legal education is to prepare students to practice the actual law with which, at least for a few years, they are likely to be exclusively concerned, it requires no extended argument to show that a curriculum organized throughout with this end in view, and including all last-moment details so to speak, provides the very best system of training. Many schools have been, and will be, organized from this severely practical point of view. It represents one ideal of legal education, and an entirely legitimate one, assuming always that in the effort to do justice to the fine points at the end, the broader introductory portions of the training are not slighted. There is no inherent reason why a school that aspires to teach only actual local law should not extend its curriculum backwards, as it were, provide thereby a basis upon which the fine points of this law may rest, and be a very good school — for this particular purpose.

Before the Civil War, however, the law schools, very similar to one another in other respects, had begun to diverge on just this question. Harvard had bravely announced in its catalogue in 1841 that "No public instruction is given in the local or peculiar municipal jurisprudence of any particular state." Dwight printed a similar statement in regard to the work of his Columbia school. Other schools also that catered to students from several jurisdictions obviously could not do everything for everybody, and with or without formal announcement perforce pursued a similar policy. It is easy to assert that this policy was at bottom determined for them by the composition of their student bodies, and that arguments adduced in support of it were merely attempts to justify what the immediate interests of such schools in any event required — that they sagaciously claimed as a merit what was really a rather striking deficiency in their course of training. Given the superficial character of all legal instruction before the Civil War, it is doubtless true that here, as in other respects, all schools were much alike in following the line of

least resistance. It is by no means clear that Harvard put enough into her ante-bellum curriculum to make up for all that she left out of it. A thoroughly good local law school, judged by modern standards, would probably be a better school from every point of view than was the Columbia school while it dallied with generalities. It would, however, be a clear case of putting the cart before the horse to assert that the original Harvard policy of omitting this local law element from its curriculum was forced upon it by the circumstance that students from many different jurisdictions attended its school. Quite the contrary, its traditional policy, inherited from Dane and Story, was to induce students from different jurisdictions to come with precisely this object in mind: that here they would find a school in which only national law was taught, as distinct from the aberrant law of any particular jurisdiction.[1]

A "national law school" can be defended, as against a local law school, by arguments designed to prove that the local type is bad. It may for instance be contended that, while in theory a school whose primary aim is to teach local law may be made to serve this purpose acceptably, in practice teachers who are dominated by such narrow views will never provide their students with a sufficiently broad foundation. Or again it may be urged that a local law school permanently stunts the development of a lawyer — that precisely because it prepares him very completely to practice the particular legal system to which it is keyed, it permanently unfits him ever to cope with any other. Attacks of this sort, however, provoke equally plausible retorts as to the practical ineffectiveness of generalized study. The sound argument in support of a national law school is based on a frank recognition of the fact that a school of this type is designed to serve a different purpose from that of a local school. Its primary interest is not with the law as it is, but with the law as it may become. It recognizes the lack of uniformity in the law of the several states as a fact, but as a regrettable one, and conceives its mission to be to do all in its power to remedy this evil, both on the personal and on the scholarly side. It sends into practice, into the legislature, on to the bench, men who, understanding the ideal as distinguished from the actual law, recognize their responsibility as parts of a general law-making machine and are animated with the ambition not merely to utilize the law as it is, but also to convert it into a more efficient instrument of justice. It

[1] What the Germans call *Sonderrecht*. Compare Redlich, *Case Method in American Law Schools*, p. 53.

produces textbooks and periodical articles with the same end in view. It is not daunted by the sneering comment sometimes made that it encourages its youngest graduates to think that they know more law than the courts. It pictures as the special function of a university law school that it should train practitioners and scholars who in the aggregate, as they mature, certainly ought to be better equipped for the task of intelligently reconstructing the law than are the products of old empirical methods.

This was the tradition of Dane and Story[1]—the conception of institutions of learning which should slowly dominate the law, fusing into a coherent homogeneous body the scattered and frequently contradictory principles that are ground forth by overburdened courts or adventurous legislatures. The difficulty with carrying this conception into effect is that pending the time when the law becomes what it ought

[1] See, in addition to Dane's letter offering his donation to Harvard (page 143, above), the following passage from his *Abridgment*, quoted approvingly by Story in 1826:

"A great republic . . . is the natural field of law and equity; but to produce these in perfection there must be a *national* character. The rules of law and equity, in important matters, must be uniform, and pervade the whole nation." Story, Joseph, *Miscellaneous Writings*, p. 329.

In the interest of clearness I have, in this attempt to explain the mission of the "national law school," used the term "law" in the sense familiar to hardheaded practitioners, to signify the bodies of rules enforced by the courts; and I have treated the body of doctrine that is taught by the national schools as a gloss of critical comment upon these—something that may lead to changes in the law, but that is not law itself. In Continental Europe, the analogous body of university doctrine is regarded, if not as absolutely authoritative genuine "law," at least as the nearest approach to such law that they possess; statutes and decisions are the still less perfect expression of the principles expounded by scholars. In other words, England and the United States identify "law" with the actual, France and Germany with the ideal. It is possible that just as the Continental conception of law was the outgrowth of attempts, by civil lawyers, to reconcile the diversities found by them in bodies of actual local law, so we, with our forty-nine variant jurisdictions, may in time be led, through the activities of our national law schools, to think in Continental rather than in English terms. The circumstance, however, that Continental jurists have forced into popular usage an ethical word (*droit*, *Recht*) to signify law as a whole (*jus*), while we habitually use the same word to denote what our traditions have taught us to regard as even more important than the law of the state, namely, the *rights* of the individual, puts our universities at a rhetorical disadvantage. It is therefore more probable that generalized, university-made legal principles will acquire authority in this country under the name, and in the spirit, not of "law," but of *justice*.

As to the peculiarity of the Anglo-American conception of law, see Lowell, A. Lawrence, *The Government of England*, 1908, II, 471–88; and compare Roscoe Pound's reference to "the ambiguity of the term 'law' that requires us to use one word for the legal precepts which are actually recognized and applied in tribunals of a given time and place and for the more general body of doctrine and tradition from which these precepts are chiefly drawn and by which we criticize them." 34 *Harvard Law Review* (1921), 452.

to be, practitioners have to make their living out of the law as it is. There is an insistent pressure, therefore, upon the national schools to supplement their particular function of teaching ideal or generalized law, by courses which shall not leave their students suspended in this rarefied scholarly air. The advisability of doing something of this sort was especially apparent to the eastern schools in 1875, when New York was about to adopt an extremely complicated Code of Civil Procedure. This highly technical addition to the local law was so bad that since then the profession has devoted much of its energies to abusing it, and the legislature to changing it and making it worse. If there ever was a portion of the law that has no place in an ideal system, this was an instance.[1] Yet there it was, a part of the law of the state. No one could be considered in any sense qualified to practice in New York, who was not familiar with it. Both Harvard and Columbia, accordingly, were constrained this year to depart from their historic platforms and to institute courses in this new subject. Three years later Harvard abandoned all attempt to teach procedure. In 1886, however, both students and the University authorities petitioned for a special course in Massachusetts Practice. For the moment the faculty consented only to allow students the use of a room, in which they might organize their own class, but in 1890 logical consistency was sacrificed to practical expediency, and an instructor in the Peculiarities of Massachusetts Law and Practice was appointed. Two years later, instruction in the New York Code of Civil Procedure was revived. Since 1896 both courses have been given in alternate years, as extra courses not counted toward the degree.

Thus—since in Columbia the New York Code was eventually made a regular elective—a third solution of the local law problem was evolved. Nationalized law was to constitute the main body of instruction, with addenda of local law courses for the benefit of particular groups of students. This solution was pushed to its logical conclusion

[1] The writer must plead guilty to using this violent language in regard to something that, at first hand, he knows nothing about. He can merely testify that the Code of Civil Procedure was originally forced on the profession over the protest both of the New York City Bar Association and of Professor Dwight, and that if it has any defenders left to-day he has not happened to run across them. Its evil reputation is such that it is difficult to find a New York practitioner even now who can express himself temperately in regard to any suggestion that an attempt should be made to codify any other portion of the common law at any time in the future, however remote. This disastrous failure killed, so far as one entire generation of New York practitioners was concerned, the entire codification movement.

For a concise history of this Code, see 6 *Journal issued by the American Bar Association* (1920), 53.

in the West. As early as 1891, the State University of Iowa law school was announcing that a course in the law of a particular state would be organized for the benefit of any three seniors that might apply for it.

This third scheme of instruction, if it were to be carried out comprehensively and adequately, would be very wasteful both of money and of time. On the other hand, where it is not made to cover the entire country—where special facilities are provided for students from one or two jurisdictions only—the school is to this extent less likely to attract students from the slighted states; and this in spite of the fact that states from which fewest students come are precisely the ones that need most to have nationalizing influences brought to bear upon them.[1] Nor does it work well to have the school cover some, but not all, of the important peculiarities in the law of some one state. They thereby assume a responsibility toward their students that they do not adequately discharge. The Harvard–Columbia device of including a course in the New York Code of Civil Procedure, but ignoring peculiarities in New York's substantive law, has been the especial stimulating cause of the friction with the New York bar examiners, to which allusion has already been made.[2] The bar examiners have felt it their duty to insist that applicants shall not be admitted to practice law in New York unless they show familiarity with recent decisions of the New York courts. These two schools, being more interested in reforming than in disseminating the law that is handed down by these courts, resent being asked to take time to explain arbitrary peculiarities of which they disapprove; resent still more the fact that schools which teach these peculiarities without even any suggestion that they are peculiar are favored by New York examination methods.[3]

It follows from what has been said that a generally satisfactory solution of the problem presented to the legal educator by the existence of local peculiarities in the law has not yet been reached. It will not be reached until the state learns to discriminate as the schools already are beginning to do. Such progress as was made during this period, or as has been made since then, toward solving the problem, has taken the form of accentuating a differentiation, long existing in theory, between two types of schools: those that accept local peculiarities as facts to be taught, and those that regard them as evils to be eliminated.

[1] Harvard now encourages students from such states to form local law classes of their own, on the 1886 model.

[2] Page 268. [3] Written in 1917.

Because of this difference in fundamental ideals, each type of school will always be weak where the other is strong. Perhaps each might profitably borrow a leaf from the other's books. It may be that the local law schools might preface their localized instruction with a more thorough treatment of the law that is common to all jurisdictions, and that the national schools might add a fuller treatment of the local law than now appears. Whatever changes, however, may be made in this respect, a difference in emphasis will always remain. Schools that exist primarily to satisfy a public demand, which in a democratic community is bound to be reckoned with, will be stronger at the hither end of the instruction, where immediate utility is most manifest. Schools that exist primarily to exercise that leadership which a democratic community requires will be stronger at the farther end, in studies whose utility is perhaps even greater for being more remote. When each type of school learns to respect the other's especial field, and the state devises a bar admission system capable of doing justice to both, the problem will be in a fair way of being solved. It is probable that in our final educational scheme, the two types will be found coöperating with one another.[1]

2. *The Generalized Law of the Country as a Whole*

The technical or professional law that the legal practitioner will be called upon to practice—"municipal law," in Blackstone's terminology

[1] The general acceptance of the case method of teaching by the more scholarly national law schools has made possible the following arguments tending to show that the local law problem is solved in a satisfactory manner by these schools. First, since this method involves the critical discussion of conflicting decisions from numerous jurisdictions, the student need only make a blue pencil mark opposite references to his own state; the sum of these references constitutes the actual judge-made law of his state. Second, a competent instructor always notes in passing the principal modifications in the common law produced by statute in any state. Third, the object of the case method being to produce lawyers who will be able to look up the law for themselves, rather than to give them, while they are still students, a detailed knowledge of the law, most peculiarities of the local law belong with those minutiae that are properly excluded from the curriculum of a university law school. This last argument refutes the other two, and brings up the real question at issue. It being obviously impossible for a national case-method law school to teach within the same period of time as many details of the actual law as can be covered by a less ambitious local institution dedicated primarily to this purpose, does it therefore follow that systematic instruction in the actual law ought not to be offered by anybody? The answer of the future practitioner, as distinguished from the future reformer of our complicated system of laws, is certain to be an emphatic negative; and since there are enough of him to support the sort of institution he wants, such institutions will always flourish.

— has from the beginning been the object to which the American law school has primarily devoted itself. Whether or not it has carried its devotion so far as to include details that vary from state to state, it has tried to cover all branches of this law that are of general application.[1] At first it was possible to combine with this study other topics, notably government (political science), which is a division of law in a broader sense, and is a valuable study both for the legal practitioner as such, and for the practitioner in government — the politician. But with the increasing difficulty of doing justice to the narrower field, such topics had been pretty generally crowded out even before the Civil War. A subject described as Constitutional Law survived, indeed, as a standard topic, but under the influence of Cooley's text[2] this has tended to become simply a technical course on constitutional limitations — a discussion of the principles established by the courts in determining the constitutionality of legislative enactments. The adoption of the Fourteenth Amendment to the federal constitution, just after the Civil War, greatly increased the volume of these decisions, and, together with the growth of the common law itself, made it necessary for the schools to confine themselves even more rigorously than before to technical law studies.

This restriction of the law school curriculum to technical law was bad for the lawyer, and perhaps even worse for the politician. For in spite of the fact that legal education was not keyed to his especial needs, the inherent connection between law and politics has made the law school the nearest thing to a training ground for the profession of politics that we possess. The lawyer, more than any other single vocational type, is tempted to diverge from the career of private practice, for which he has consciously prepared himself, to that of political life, for which he finds himself more or less prepared incidentally. His law training is at least more useful to him for this purpose than are most other forms of training. His success in politics is, for instance, much more marked than that of the products of government or political science depart-

[1] So at least since 1848, when, after Story's death, Criminal Law was restored to the Harvard curriculum. Because of its large statutory and local element, this subject did not fit into Story's conception of a common-law national school. The retention by Langdell of a course bearing this name, in spite of the fact that the bulk of what one would expect to see treated under this head cannot be taught by the case method, shows how firmly planted in 1870 was the tradition that all branches of technical law must be included in the law school curriculum.

[2] *Constitutional Limitations on the Legislative Powers of the States*, 1868.

ments that have been established independently by the colleges.[1] Hence the control of our government has very largely passed into the hands of a profession that is undoubtedly better qualified to discharge this responsibility than is any other single class, but that has been trained, nevertheless, in a narrow and one-sided manner. The trouble with our lawyer leaders is not alone that they have never been given an opportunity to make a careful study of the political mechanism that has been confided to them to operate and to perfect. In addition they carry over into public life the particularist as opposed to the social point of view. Their primary interest, as private practitioners, having necessarily been to serve their clients, they continue, often in good faith, to serve primarily their constituents in public life—corporations or labor unions, as the case may be. They are predisposed to identify the interests of the community with those of some special party or part, rather than to subordinate special interests to the common welfare.

Narrow as is this field of technical law, in comparison with all that might profitably be included in an ideally complete curriculum, nevertheless it is itself continually expanding as part of the general growth of the law. This expansion shows itself both in the development of new topics in the law administered by the state courts[2] and in the gradual extension of federal law over specific portions of private practice.[3] Toward the end of this period, moreover, the Interstate Commerce Commission was established; it has gradually dawned upon the schools that the determinations of this and similar administrative boards, both federal and state, constitute a new type of law, bearing somewhat the same relation to the law found in judicial decisions that equity originally bore to the common law, and as properly to be included in a comprehensive curriculum. The schools have responded to this challenge to their activities with fair success. With much variation of detail as regards the omission or emphasis of special topics, such as admiralty or patent law, they may be said to have kept abreast of their increasing responsibilities in this respect. They have felt obliged to expand their instruction in this manner, for the reason that although a considerable

[1] This is of course partly to be explained by the fact that the attempt on the part of the colleges to fill the void left by the narrowing of the law school curriculum is too recent to enable us to judge it by its fruits. Predominantly, however, such departments have been more interested and more successful in encouraging productive scholarship than in training their students to enter politics as a profession.

[2] As an example from a later period, Mining Law and Water Rights.

[3] *E.g.*, Admiralty, Patent Law, Bankruptcy.

measure of specialization has begun to appear in the practice of the law, none is recognized by the bar admission rules of the states.[1] A practitioner may confine himself in his practice to admiralty or to patent law, to defending criminals or to protecting corporations, to trial work or to approving municipal bonds, but to do any of these things he has to be a general lawyer first. In this, as in other questions of policy, the schools must conform to the traditional organization of the profession.

This extension of the field of law, however, over new areas of human conduct, has constituted only one element, and not the most conspicuous element, in the growth of technical law. Entirely apart from the influence of this factor in adding to the number of expository or pedagogical heads under which the law is arranged for instructional purposes,[2] there has been a tremendous increase in the mere volume of statutes and decisions.[3] This has been a much more serious complication in the problem of the schools. Confronted as they now are with the triple responsibility of teaching law that is developing new branches, of teaching law that is increasing daily in bulk, and of teaching law by modern and more thorough methods, they show signs of giving way under the strain.[4] Technical law threatens not merely to crowd everything else out of the curriculum, but to be itself too heavy a burden for any single school to carry as a whole. The throwing overboard of local law already lightens the load for some, but some further action will almost certainly have to be taken by the admitting authorities and the schools. And as there seems to be no practicable means of reducing the volume of the law in the near future, and nobody wants the law to be less thoroughly taught, the only available remedy is in the direction of specialized schools leading into specialized branches of the profession. This development will probably not occur very soon.

[1] Such phenomena as New York's special provision for conveyancers, Colorado's exemption of probate practitioners from its bar admission rules, etc., are indications of uncertainty as to just what the rights and privileges of a duly admitted "attorney and counsellor-at-law" may be. He frays off into a plain citizen in the lower or incidental reaches of his practice. So the question whether or not one who is not a lawyer may pose as offering legal advice, or may receive money for giving legal advice, is ignored or answered differently by different states. These failures to define the profession, however, are very different from a conscious effort to differentiate it.

[2] As to the division of the law into subjects and "courses" by the schools, see below, pages 345–353 and 363–368.

[3] As to this increase in the volume or bulk of the law, as distinguished from what may be termed its superficial area or field, see below, pages 373–374.

[4] For criticism of the remedy forced upon the schools by this situation, see below, pages 309–311 and 379 ff., 383 ff.

It will probably not occur as soon as it ought. Sooner or later, however, as the existing unitary organization of legal education, and of the profession itself, proves inadequate to meet the requirements of actual practice, the organization will be changed to correspond. Even then it will not meet these requirements perfectly, for conditions change more quickly than mechanical improvements can be made. But the capacity of the system will be less hopelessly overtaxed than it is at present.

A rough indication of the way in which the schools began during this period to feel the strain upon them, and of the different policies that they were pursuing in this respect, may be gathered from a collection of law school curricula published by the United States Commissioner of Education in 1891.[1] Singling out three comparatively specialized topics — Admiralty, Patent Law and Railroad Law — it would appear that only twenty-three schools, out of forty-nine that reported, offered separate courses under any of these three titles.[2] Eight of these offered only Admiralty;[3] three, Patents;[4] two, Railroad Law;[5] three, Admiralty and Patents;[6] three, Admiralty and Railroads;[7] two, Patents and Railroads.[8] Only two schools — Yale and Michigan — offered all three subjects.

3. *International Law and Jurisprudence*

In addition to government and economics, which, except as later indicated, have been crowded entirely out of the law school into the college, there is a group of subjects more closely related to technical law than these, but like these of no apparent immediate utility to the private practitioner. Such a subject is international law, which, if this imper-

[1] *Report*, 1890–91, I, 414–438. It may be assumed that the schools not covered by this report all offered relatively narrow courses.

[2] Admiralty and Patent Law were doubtless occasionally concealed under such heads as "Practice in the United States Courts" or "Federal Jurisprudence," and Railroad Law under "Carriers" — a general head from which our economic development and the Interstate Commerce Act eventually rescued railways. Michigan already made special mention of the Interstate Commerce Act, and Northwestern of Interstate Commerce.

[3] These schools, listed in the alphabetical order of the jurisdictions in which they were located, were: Georgetown, Tulane, Maryland, Minnesota, Buffalo, Columbia, South Carolina, Washington and Lee.

[4] George Washington, National University, Harvard.

[5] North Carolina, Wisconsin.

[6] Iowa, Missouri, Cornell.

[7] Baltimore University, Boston University, Mississippi.

[8] Northwestern, De Pauw.

fect world were organized neatly, like a diagram, would bear the same relation to national law that this bears to the law of the local jurisdiction. And such subjects are historical law, comparative law, and legal philosophy, including analytical jurisprudence—a group typically represented by the Roman or civil law, and, taken together, conveniently described under the general term of "jurisprudence."[1] These topics also tended to be squeezed out of the law school, and to be revived, if at all, in the college. Their claim to be retained, or to be revived, by the law school itself was, however, obviously a little stronger than was that of studies in government. If we recognize as a fact, whether regrettable or not, that law, in its broad sense, has come to be divided into two main divisions—technical law, regarded as the special province of the professional law school, and government, relegated almost entirely to the high school and college—then international law and jurisprudence may be said to be just on the dividing line. Some of the law schools had never lost one or the other of these subjects; some introduced or revived them after the Civil War. On the other hand, the colleges also were expanding their curricula at this time, so that they frequently seized these subjects as their own. International law, in particular, survived as a heritage from the old "professor academical" of law. It was offered in 1891 by no less than 134 colleges, including fifteen that had law schools attached.[2] Twenty-three law schools gave the course themselves, or included in their curriculum a course in this subject primarily carried by the college.[3] Only eleven law schools, out of forty-nine reporting to the United States Commissioner, neither gave the course themselves nor were attached to a college that gave it. Jurisprudence courses were less popular, appearing only in twenty colleges that had no law schools[4] and in four

[1] As to the customary use of this term, to embrace a wide variety of subjects, compare Kocourek, Albert, note in 17 *Proceedings of the Association of American Law Schools* (1919), 121, or 8 *California Law Review* (1920), 232. It is used even more broadly to designate a synthesis of law, political science, economics and ethics, by Johnson, T. A., 15 *Illinois Law Review* (1920), 289.

[2] Hastings, Howard, Illinois Wesleyan, Chaddock, Iowa, Washington University (St. Louis), Harvard, New York University, North Carolina, Ohio State, Willamette, Pennsylvania, Cumberland, Vanderbilt, Wisconsin.

[3] Alabama, Yale, George Washington, Georgetown, Northwestern, McKendree, De Pauw, Drake, Kansas, Tulane, Maryland, Baltimore University, Michigan, Minnesota, Mississippi, Missouri, Cornell, Columbia, South Carolina, Texas, Virginia, Washington and Lee, West Virginia.

[4] Sixteen offered Roman Law only, two "Jurisprudence" only, Princeton both subjects. Johns Hopkins offered Roman Law, Comparative Jurisprudence of the Principal European Systems, History of the Common and Statute Law of England.

that had.[1] Fifteen law schools themselves offered such work, five having courses in Roman law only,[2] five in general jurisprudence or legal history,[3] five in both Roman law and other subjects.[4]

The following table shows in summary form the extent to which either international law or any of the subjects included under the general head of jurisprudence appeared as a subject of law school instruction in 1891:

Number of law schools in which subject was:	*International law*	*Jurisprudence*
Offered by the law school	23	15
Offered by the affiliated college	15	4
Not offered [5]	23	42
Total number of law schools	61	61
Number of outside colleges offering the subject	119	20

The following table, constructed from a different point of view, aims to bring out the extent to which the technical law school curriculum was broadened by the offering of "borderland" studies (including "Jurisprudence" in a narrower sense) either in the school itself, or anywhere in the institution:

Number of law schools in which courses were:	*Number of courses offered* None	*One*	*Two*	*Three*	*Four*	*Six*	*Total number of law schools*
Offered by the law school	34	15[6]	7[7]	2[8]	2[9]	1[10]	61
Offered by the university	22[11]	20	12	4	2	1	61

[1] Harvard, Pennsylvania and Wisconsin offered Roman Law only; the University of California also a course in "Jurisprudence" out of which later developed first a Department of Jurisprudence, and eventually a second professional law school competing with the University's already established Hastings College of the Law.

[2] Iowa, Drake, Tulane, Cornell, New York University.

[3] De Pauw, Georgetown, Boston University (Roman Law also was given by the college), Michigan, Minnesota.

[4] Yale, George Washington, Northwestern, Washington University (St. Louis), Columbia. The broadest course was that offered by Yale for its two-year graduate work, which included Roman Law, the Code Napoleon, Early History of Real Property, Comparative Jurisprudence and the Canon Law.

[5] Including thirteen schools not giving information to the Commissioner of Education.

[6] Usually International Law; but Roman Law (with International Law offered by the college) in Iowa and New York University; Legal History (with Roman Law offered by the college) in Boston University.

[7] International Law and Roman Law in Drake, Tulane, Cornell; International Law and Jurisprudence in Georgetown, De Pauw, Minnesota; Roman Law and Legal History (with International Law offered by the college) in Washington University (St. Louis).

[8] International Law, Legal History and Roman Law in George Washington; International Law, Legal History and Jurisprudence in Michigan.

[9] International Law, Legal History, Roman Law and Jurisprudence in Northwestern and Columbia.

[10] The above with Code Napoleon and Canon Law in Yale.

[11] In eight cases where the school offered no such subject, the college offered Inter-

4. *Law School Instruction in Government*

Finally, although it was becoming increasingly apparent that the entire responsibility for providing instruction in government would have to be shifted to the high schools and colleges, not all the law schools were willing as yet to face the risk involved—namely, that under these conditions the law student might receive no instruction in government at all. This risk was especially great in states where the high school system was undeveloped. Throughout the South "Constitutional Law" seems to have retained its older, broader content, as distinguished from the technical study of judicial decisions now commonly designated by this term. At least three southern law schools offered also descriptive courses in government in 1891.[1] Elsewhere the tendency was to emphasize the historical development rather than the existing details of governmental institutions. Three northern or western schools offered courses in American Constitutional History;[2] five combined with this English Constitutional History.[3] In several instances this work was given during the first of the law school years and could have been of little more than high school grade, conveying information that every educated citizen ought to possess, and offered by the law school only because the lower schools could not be trusted to provide it. In four of these schools, however, more ambitious work was attempted. There was a genuine effort to restore government to the place from which the growth in technical law had dislodged it. Northwestern, Michigan and Columbia all offered courses in Comparative Constitutional Law under this name. Yale used the broader categories of "Political Science and History," "Political and Social Science," and invaded even the economist's field. Supplementing a course on taxation was one on Public Finance; supplementing Railroad Law were courses on Railway Management and the Economics of Transportation.

Reference to the last table will show that these four law schools were the ones that were most hospitable to the borderland subjects also. They represent—particularly Columbia and Yale—the element to

national Law; in three cases this and Roman Law; in one case these subjects and Jurisprudence.

[1] Virginia had "Lectures on Government;" Georgia covered the political organization of the state; Texas had a course on the "Government of the United States and of Texas."

[2] Iowa, Michigan, Minnesota.

[3] Yale, Northwestern, McKendree, Cornell, Columbia.

whom it was most clear that legal education demanded a widening rather than an intensifying or deepening of the law school curriculum.[1]

[1] Yale's broad course of study dates from 1876. Efforts made by the Columbia University authorities this same year to "reintroduce those branches of jurisprudence lost by the death of Lieber" were blocked by the opposition of Dwight until 1880. See below, pages 305 and 334.

CHAPTER XXVI

OPTIONAL AND ELECTIVE COURSES

WHILE some schools were more interested than others in bringing borderland subjects within reach of their students, all felt the obligation to make the curriculum cover the widest possible area of the technical law. In all schools, moreover, the increasing volume of judicial decisions made it increasingly difficult to do justice to even a narrow field of study. Harvard added to its difficulties in this respect by committing itself to an unusually onerous method of teaching. In one way or another, in short, the curriculum was rapidly outgrowing the conventional limitations of time and effort that had hitherto been expected of law school students. A broadening impulse and a deepening impulse produced much the same practical effect in forcing a mechanical readjustment of the degree requirements. Since, as always, devices invented by one school were eagerly seized upon by another, irrespective of their appropriateness to its particular policy, it will be convenient to consider all such devices together.

1. *Optional Additions to the Regular Curriculum*

Some of the additional load could, of course, be accommodated merely by tightening up the slack—by increasing the length of the academic year, that is to say, or the number of hours per week carried during the year by the students. In proportion as this remedy proved inadequate, additional academic years were added. We have seen[1] how one-year schools were thus brought up to a more or less genuine two-year level, two-year schools to three years or even more. This device, however, could be successfully employed only to very limited extent. If it took the form of adding to the LL.B. course "postgraduate" years, leading to new degrees and covering either the less important parts of the technical curriculum[2] or borderland subjects,[3] then few students would stay to take the work. If it took the form of lengthening the LL.B. course itself, this could only be done cautiously, or students would go to another school. In practice three years was the maximum length that even the wealthier universities could afford to insist on,

[1] Pages 170–181. [2] So Harvard, 1873–78.

[3] All schools, except Columbia, that attempted much borderland work, put it into a postgraduate year or years.

and this soon turned out to be none too long to accommodate merely the technical work. The lengthening of the course, to the extent that it was practicable, provided temporary relief; but it could not be carried far enough, with the bar admission rules as they were, to enable the schools to put into a prescribed curriculum all that some of them thought ought to be there.

The result was that most of the schools soon abandoned the attempt to glue on to the regular professional course a postgraduate year, containing an entirely different type of work. Where, as in the Washington, D. C., schools, this year survived, it was because it came to include a large measure of technical law. It proved to be merely a stepping-stone to the three-year LL.B. course, and this step, when finally taken, had as its object not to provide room for the borderland subjects, but to permit a more adequate treatment of the technical law. Whether the course covered two years or three, its general character was the same. Either no borderland work at all was offered,[1] or a very little was squeezed in. The college connection made it possible to offer more of this work than would otherwise have been the case. Doubtless often when the school reported International Law or Roman Law as included in its curriculum, the subject was primarily a college course, thrown open to students in the law school.[2] In such cases the subjects, necessarily taught with a non-professional slant, may be said to have been plastered over, instead of glued on to, the professional curriculum. At Columbia, for special reasons, this plastering over process was carried much farther than in other schools. Because of Dwight's opposition, the extensive offerings in public law and jurisprudence were organized separately from the law school and were not prescribed for law students. They were, however, not merely thrown open to law students without extra charge, but in 1885 the requirements for the degree of A.M. were so framed as to encourage college graduates, registered in the law school, to do double work.[3] The device was defensible at the time, be-

[1] So in two of the four genuine three-year schools (Hastings and Pennsylvania). Harvard offered a single hour a week in Jurisprudence from 1878 to 1883, and an hour a week for a half year in Legal History from 1886 to 1890. For Columbia, see below.

[2] Such cases are to be distinguished from cases in which one or both of these subjects were merely offered by the college. Graduates of the college had here the opportunity to take these subjects before entering the school. Once in the school, however, unless special arrangements were made, a conflict of hours would usually prevent the subjects from being taken even as optional additions to the regular course.

[3] See below, pages 333-338. for a fuller description of the peculiar Columbia development. At present extra fees must be paid.

cause of the small number of hours a week — seven and a half — that Dwight required of his students. The governing powers could argue, with some justice, that the young men might better spend their spare time studying allied subjects in the university, than idling in the law offices where Dwight wanted them to be. It is only at the present day, when the law school needs the full time of its students for its own degree, that this encouragement of double work is hard to justify. Other institutions did not follow the Columbia lead in this respect. Its survival here to the present day is a mere anachronism.

To whatever extent particular institutions employed the devices already described, it is obvious that the limit of effective action along these lines is soon reached. It is true that a school ought to fix the number of years required to secure its first degree at a figure that will enable it to realize at least approximately its ideals of what this degree shall stand for. But it is also true that if its ideals are high, there will always be some additional work that it will want to offer, but will have difficulty in fitting in without impairing the effectiveness of instruction in fundamental subjects. If, now, this additional work is of such a character that it need be taken by only a few students, they may properly be invited to take it during an additional optional year. But here again few universities are so free from dependence upon students' fees that they can afford to offer good postgraduate courses that are sparsely attended. Finally, within reasonable limits some of this work may be offered as optional additions, to be taken simultaneously with the regular course. Such is the natural disposition to make of minor specialties, for instance, for which a few lectures may suffice. Indeed, an absolutely inelastic curriculum means an ossified as distinguished from a living institution. Beyond a certain point, however, expansion by the method of optional additions breaks down. It becomes impossible to put new matter in without forcing old matter out. Either the faculty must recast the curriculum, substituting the new for the old, or the student must be permitted himself to perform this substitution.

2. *The Elective System*

Hence arises the "elective system" in education. Its underlying principle is that a student, instead of being given the option between doing merely a minimum amount of prescribed work, or doing this minimum and also something more, is permitted to determine what the minimum

itself shall consist of. In order that this may be possible, it is necessary that the instruction be organized for him in units of standardized size.[1] He then uses these like bricks, to build for himself his educational structure. Where the principle is carried to an extreme, he is virtually his own architect. Usually, however, at least the main lines of the edifice are prescribed. Or he may be allowed freedom of choice only in regard to unimportant trimmings.

The Harvard school, after the Civil War, was the first law school to adopt the elective principle in its modern form, and since Harvard under Eliot was also the leading exponent of this principle in college work, it is natural to think of the law school movement as a mere reflex of Eliot's policy—the more so as other law schools, like other colleges, have been greatly influenced by Harvard's lead in this particular. As a matter of fact, the principle in its essential spirit dates back to Jefferson and Virginia, and was first applied, both to the college and to the law school, by an early disciple of Jefferson, Mr. Justice Story. Eliot merely carried further a principle to which the university was already committed.[2] In particular, as regards the law school, Story was confronted with the problem of how to combine a course of study that would take two years to complete, with a degree course that could not be extended beyond a year and a half. He solved the problem by making a half-year's residence his unit, and conferring the degree upon any student who, out of these four units, took any three. This was the system that Langdell inherited in 1870, and against which he reacted at once. After a single year's experimentation with an elective system, he instituted a two-year degree course, the entire content of which was prescribed. The work that was left over, although termed "elective," was merely additional work, which the student might take either at the same time or in a subsequent graduate year. Langdell's first move, accordingly, was not to introduce, but to destroy, the elective principle.

In 1875, however, he revived it in its modern form, wherein an hour a week of instruction, continued throughout the academic year, is the unit. "Courses" in the different topics figure as multiples of this.[3]

[1] The units need not necessarily be all of the same size, but there must be a simple relation between the larger and the smaller, in order that a uniform total amount of instruction may be required.

[2] See his history of the elective system at Harvard, in *Annual Reports of the President and Treasurer of Harvard College*, 1883–84, pp. 6–24. George Ticknor, whom Jefferson had endeavored to secure for his new University of Virginia, was an important factor in introducing the new idea into Harvard.

[3] For detailed Harvard mechanics, see below, Chapter XXX, pages 354 ff.

For the degree, a required total of these units must be taken each year by the student. With an instructional staff raised to four full-time men prepared to offer a total of between twenty-five and thirty hours a year, Langdell preferred to require of his students attendance at only ten class exercises a week during each of their two years, or twenty year-hours all together, and to dispose of his surplus offerings by this method of allowing one course to be substituted for another, rather than to overload the students with either prescribed or optional additions. With the introduction of the three-year curriculum in 1878, he had for the moment a little more time than he needed. In his own words, he was prepared to give subjects which it would not "be reasonable to require every student to take." He accordingly reduced the pressure of work during the two upper years, "to enable them, in the latter part of their course, to cultivate the habit of legal investigation without the aid or guidance of a teacher."[1] He thus still had a surplus of offerings which, with the natural growth in the law, gradually came to include more subjects of general practical utility, and led, in 1882, to an increase in the number of hours required to be taken by upper-class students.[2] By this process of increasing the requirements the surplus was kept very small — from the introduction of the three-year course until 1886 it amounted to only four or five hours a week — and, furthermore, the student's freedom of choice was greatly restricted. The student's first-year work has always been entirely prescribed at Harvard; during his second year he was obliged at this time to select four — or after 1882, five — out of six specified two-hour courses; only in his third year could he freely choose out of anything that was offered. "Honor" students had hardly any choice at all.[3] This latter circumstance is especially significant as indicating Langdell's real attitude toward the elective principle. He was no believer in the idea of letting untrained students decide for themselves what they shall study. He permitted them to do this only to a limited extent, as an aid to developing new courses. His principal interest was in gradually build-

[1] *Annual Reports of the President and Treasurer of Harvard College*, 1880–81, p. 78.

[2] Experience showed that students, instead of "cultivating habits of legal investigation" during their leisure hours, felt it a waste of time to stay in the school. During the early years of his deanship, Langdell had great trouble in holding his students.

[3] From 1878 to 1882, all their second-year work and one-third of their third-year work was prescribed. For the remaining two-thirds they had to choose six out of only eight hours offered. From 1882 to 1886, four-fifths of their second-year and three-fifths of their third-year work was prescribed, with again a very small field of choice for the remainder.

ing up a well-balanced curriculum in this way. By 1886 he was satisfied that nearly three-quarters of the law taught in his school — representing nearly four-fifths of the amount he could expect his better students to take — deserved a place in this curriculum.[1]

From this year dates the full acceptance of the elective principle by the Harvard law school. Langdell had been a little too much interested in law as a science to satisfy the demands of the future practitioner. Expressions of discontent on the part of the students with the narrowness of the curriculum proved the turning-point in the policy of the school. The faculty and the offerings were increased; the prescribed honor curriculum of the two upper years was dropped. Subject to the continued prescription for all students of the first-year work, from now on a steady increase in the number of courses, carrying with it of necessity a growing freedom of choice on the part of the students as to what they would study and what they would not, became a definite and, until other schools followed its lead, a characteristic feature of the Harvard law school. A table in the Appendix shows the development in detail.[2]

After 1890 the Harvard elective offerings were rapidly increased,[3] and the elective principle spread to other schools. To the obvious argument against this policy—namely that, however difficult may be the construction of a properly balanced professional curriculum, this would seem to be a task more befitting a scholarly law faculty than an uneducated beginner—two replies are usually made. The first is that the important function of the Harvard method of instruction is not to impart knowledge but to train the mind.[4] From this point of view the subject-matter of a course is of much less importance than the way it is handled, and free competition among the instructors makes it more likely that students will be trained by teachers most competent

[1] The contents of this honor curriculum are of interest. Nearly one-half of the 23 year-hours covered by it were in the three trunk topics of Property (4), Equity (4), Contracts (3). Over a third was taken up by other classifications of the non-criminal substantive law: Torts (2), Partnership and Corporations (2), Trusts (2), Suretyship and Mortgage (2). The adjective law corresponding to this was represented by Evidence (2), Common Law Procedure (1). One hour a year was devoted to Criminal Law including Criminal Procedure.

[2] Appendix, page 459.

[3] On the eve of the War with Germany, the offerings, exclusive of those in the recently established postgraduate year, were twice as large as in the year when the three-year course was inaugurated.

[4] See below, page 380.

to train them—in short, the alleged defect of the elective system constitutes really one of its principal merits. The second reply is that under the elective system Harvard developed an astonishingly successful school. One who is not himself a product of the system, however, can but feel that the real reason why Harvard has come to belittle the imparting of legal knowledge is because the elective principle is so obviously ill adapted to this end—that with a properly balanced curriculum the case method could be made to yield the training it now affords, and impart a more symmetrical knowledge of the law besides—that the success of the school is to be attributed, in short, to the fact that its merits in other respects have far outweighed its weakness in this particular. The utmost that can be said in behalf of the elective system, as exemplified by Harvard and its imitators to-day, is that of all the devices yet invented to make practicable an offering of law studies far in excess of what most students will take, this is the best. At some sacrifice to the last two generations of practitioners, it has enabled law school faculties to plough all corners of the field of technical law. When the fruits of the harvest are reaped, it will be easier than it is now to give the individual student not merely a thorough but also a comprehensive training.

It is only, however, when the elective system is combined with a severely technical course of study that its pedagogical weakness may be condoned, on the ground of its usefulness in furthering legal science. As much cannot be said for the application of this principle to a curriculum that includes the broader aspects of the law. Columbia, at the end of this period, became a signal offender in this respect. Incidental to a general reorganization of the University, it had lengthened its law curriculum to three years, and had displaced Dwight by a member of the Harvard law faculty. The object of these changes was to introduce the Harvard method of teaching—a method that, if it is to be effectively pursued, makes heavy demands upon a student's time. Harvard was already proving that three years are not enough to do justice to even a narrow technical curriculum. Columbia, however, not merely continued the old arrangement whereby students were tempted to devote part of their time to borderland topics, in quest of an additional academic degree.[1] In addition it opened these courses to law students as electives, to be counted toward the law degree proper. Columbia, in short, tried to combine the policy that was making the

[1] Page 305.

Harvard law school famous, with its own distinctive aspiration to restore lost provinces to the law.[1] In pursuit of this double end it retained or introduced devices the tendency of which was both to overload a student's time, and hopelessly to disintegrate his course of study. Permission granted to a student to substitute one technical law course for another is bad enough, but at least the organic relationship between the two subjects is close, and undeniably the training that he receives in the one will help him to secure for himself the knowledge that he might have acquired from the other. To authorize a student to substitute Roman Law for Suretyship, however, or International Law for Bills and Notes, is to carry the doctrine of educational equivalence too far. We destroy thereby that unity of aim and reasonable degree of coherence which must appear, if anywhere, during the final or professional years of a student's training. Granted that a prospective lawyer should be encouraged to take these "lost" subjects at some stage of his preparation, the first question to be considered is whether there is room for them in the modern law school curriculum, or whether there is not. If they can be added only at the cost of converting this portion of our educational system into a jumble of unrelated spots, then the proper place for them is the college. This is the miscellaneous carry-all in American education.

[1] Page 303, note.

CHAPTER XXVII

GENERAL EDUCATION: THE LOWER SCHOOLS

1. *Purpose of General Education*

TOO commonly, even to-day, "legal education" is regarded as comprising only that portion of a lawyer's preparation that is provided by masters of the craft in an office or specialized school. "General education" is thought of as something vaguely desirable on other grounds, but of importance to the profession chiefly as it bears upon this strictly professional training. Constituting in the early Virginia schools an optional part of the professional curriculum, general education has been forced by the growth of the technical law out of the law school into earlier or "preliminary" years. The natural result has been that its direct connection with the successful practice of the law has been obscured, while too much importance has been attached to its subordinate function of preparing students to do effective work in the law school.

The partisans of the college undoubtedly always saw in it more than this. Compelled to face the competition of undergraduate law schools with their own institutions, they kept alive the tradition that college training for lawyers is an end desirable in itself. This was the origin of those provisions in early bar admission rules which permitted college graduates to take their examinations after a shorter period of study than non-graduates.[1] This discrimination represented not so much a desire to shorten the preparatory period for college graduates, as a conviction that a liberal education, followed by a certain amount of professional training, constituted the ideal preparation for a lawyer. If, in concession to democratic feeling, entrance to the profession was not to be absolutely restricted to college graduates, at least it seemed reasonable that students not liberally educated should devote additional time to mastering technicalities. Had Parker's "graduate school of jurisprudence"[2] been practicable, the distinction between these two types of lawyers—those liberally educated and those not—which has always been a practically important one, would have been accentuated by two distinct systems of training. College graduates would have continued their education in the graduate law schools; non-college graduates would have resorted to the law office or to another type of law school. The bar admis-

[1] See above, page 135, note 1. [2] Page 138.

sion rules would doubtless soon have defined the functions of these two types of lawyers to conform to the quite different training they had received. In this case we should long ago have consciously worked out what at present we seem to be slowly drifting into: an avowed division of practitioners into two self-respecting and mutually supporting groups, the one animated more by professional, the other more by commercial ideals.[1]

Harvard, however, and, following its lead, all other colleges, let everybody into its law school indiscriminately, and put them all through the same course of study, whether college graduates or not. The two types of prospective practitioners were completely merged, in other words, in the technical portions of their training. The distinction became merely that after leaving the lower schools some students continued to go to college before beginning specialized professional work, while other students short-circuited the college. Legal education inevitably became defined in terms of the element common to both types of students—the technical training afforded by law school or office. The four-year college course came to be regarded as something that might or might not be interpolated between this and the lower schools, and that was more closely allied with lower school than with law school work. It was justified not as part of a student's preparation for admission to the bar, but as an extension of his preparation for admission to the law school. No state and no school has ever dared to require this much preliminary education of all its entrants. Many have encouraged it, but weakly, because their arguments have proceeded from this mistaken point of view. In the half-dozen states where, in 1890, a premium upon college graduation still appeared in the old bar admission rules,[2] the provision had long since ceased to mean, to most people, that a liberal education is of value to the lawyer on its own account, entirely irrespective of such technical studies as he may subsequently pursue. It denoted rather a belief that a college graduate has a mind so trained that he can start and finish a standardized amount of "legal education" within a shorter time than one who lacks this initial advantage. A similar notion affected the policy of many law schools.

[1] The distinction must always be merely one of emphasis. A certain amount of "commercialism" is inevitable in a profession that is supported by private fees; a certain amount of professional spirit is attainable, and highly desirable, among those who practice law primarily as a business.

[2] A single year's allowance upon the three-year period prescribed in Connecticut, Rhode Island, New York, New Jersey and Oregon; two and a half years' allowance upon the five-year period prescribed in Vermont.

It was not merely in its attitude toward the college, however, that mid-century legal education missed the point of the problem. Only two states preserved, through the democratic upheaval, the tradition that the state might properly require even rudimentary general education. These were Pennsylvania and Delaware, in which each local court determined the requirement for itself; the Philadelphia courts, presumably in advance of the rest, were easily satisfied.[1] The first law school that even pretended to scrutinize the educational qualifications of entering students seems to have been that of Boston University, which, in 1874, announced that all applicants other than college graduates "must satisfy the Dean that they possess the educational and other qualifications which will enable them to pursue with profit the studies of the school." It was undoubtedly as true then as it is to-day that an interview with a dean who is financially interested in securing as many students as possible is not an ideal method of ensuring high preliminary standards. It is to the expressed purpose and necessary result of the rule, however, that attention is particularly called. It is very difficult to show that any definite type or definite amount of preliminary education is peculiarly adapted to preparing students to undertake with profit law school or office work. It is comparatively easy to adapt the law school or office work to the preliminary education actually possessed by the students. This was the policy universally followed by law schools prior to the Civil War. All could argue that their students might profitably pursue the studies of the school, because all adapted the studies to the students. There was inherent in the system a tendency to sag on both sides of the line. The general educational attainments of the profession were lowered, because little general education was needed to do justice to the law school work. The technical attainments of the profession were lowered, because the law school work was conducted on a plane suitable for students with little general education.

The one fixed point in the system that prevented the lawyer's education from being even more defective than it was in both respects was the requirement made by many states that applicants must be twenty-one years of age in order to be admitted to the bar. To the extent that this prevailed, something like a general standard of maturity was maintained, and was the practical substitute for entrance requirements in

[1] As late as 1890, the requirements were grammar, arithmetic, algebra, history, especially English and American, spelling, etymology, geography. Note the omission of any foreign language.

legal education before the Civil War. Occasionally the schools explicitly recognized this maturity standard. Harvard, since 1849, had required its entering students to be of good moral character and nineteen years of age. The University of Michigan had a similar requirement with the age reduced to eighteen.[1] For many years the Pennsylvania Supreme Court, in addition to the slender educational requirements imposed by the courts below, had treated maturity in the same way that college graduation was treated by a few of the states: students who were over twenty-one years of age when they began the study of law were permitted to finish one year ahead of others.

The recovery from this shocking degradation of legal education has been very slow. The law schools have been handicapped by the policy pursued by the state. The state policy has been largely determined by lawyers who have picked up, as students or practitioners, legal technique, and little else. Narrowly expert themselves, they have not realized how much American law has suffered from losing contact with education as a whole. They have brought the entire profession into disrepute by cultivating an exclusive class consciousness, blind to its own defects, contemptuous of the suggestion that a phase of education that they themselves have lacked could be of any real benefit to a lawyer. Reference to State Bar Association Proceedings will reveal how much easier it is to persuade the bar that the period of technical training should be lengthened, or that the examining machinery should be strengthened, than it is to secure sympathetic consideration for a proposal to require general or "academic" education. The entire blame cannot be laid, however, on the shoulders of this ignorant vested interest. Part of it must be borne by the advocates of general education, who have not stated the argument for it as effectively as they might. If the only purpose of entrance requirements were to prepare students to wrestle with the complexities of technical law, then—let us be honest about it—no fixed amount of preliminary education need be insisted upon. The habit of doing mental rather than manual work is of course necessary. This habit may be acquired, however, in so many ways, outside of schools and colleges—and the extent to which the habit is inculcated even by schools and colleges is so much a matter of dispute—that there is much to be said in favor of the proposition that

[1] These are the only entrance requirements of any sort that I have been able to discover in ante-bellum law schools, after Harvard abandoned its original requirement of qualification under state bar admission rules.

the best way of discovering whether an applicant is prepared to study law is to let him try. A bright high school graduate or a zealous self-educated clerk will often play around a college graduate in law school courses organized as they are to-day. Indeed, there are those who maintain that college graduates show up as well as they do only because they are relatively mature — that the training given by most American colleges at the present time is rarely a help, and often a hindrance, in the development of habits of industry and of accurate thinking.[1]

Discussions of this sort take too narrow a view of the problem. From the point of view of the present enquiry, "legal education" embraces the entire formal education of a lawyer; "general education" embraces that part of it which is not given by a specialized agency (law school or office) deliberately focused upon this particular end. A portion of the training needed by those who are to practice any particular vocation must necessarily be secured through institutions or through organized courses of instruction which serve other vocations as well — and this for at least three reasons, any one of which is sufficient. Prospective practitioners of different vocations must receive part of their education in common, for reasons of economy: the community cannot afford to establish specialized machinery for more than the final stage of the training. They must do so for purposes of what is technically known as "orientation:" when they start their education, they do not themselves know into what specialized path they will eventually be drawn, and it is against public policy that they should be forced to make a too early decision. They must do so finally in order to establish an equipoise to

[1] Attempts to discover, by comparison of their records in the law school, what type of student does the best work rarely yield striking results, and are, moreover, all vitiated by the assumption that law school instruction is a fixed constant to which the students must at their peril conform. On the contrary, the instruction is and ought to be adapted to the students who have once been permitted to enter the school. Their money and time have been taken; they have acquired rights which must now be respected. With a homogeneous student body, it would be easy to do justice to all. With a heterogeneous body of students, the danger is that either the least well prepared will get nothing from the instruction, or that the best prepared will not get as much as they otherwise would. Statistical enquiries, under these conditions, reveal nothing as to the relation between the type of student and his capacity to study law. They reveal at most the particular form of injustice of which this particular law school is guilty.

High entrance requirements undoubtedly tend to create a more homogeneous student body. They weed out the extreme variations, and thus make more possible the maintenance of uniform and high instructional standards by the school. It is only, however, when the minimum requirements for entrance are very severe that they perform this incidental service, which is of little importance beside the direct advantages that a student gains by being broadly educated.

the narrowing tendencies of training for one particular end: the late war has fortified in this country the English tradition that education which conduces in no way, that human calculation can foresee, to the efficient discharge of our particular duties, whether as citizen or as individual, may nevertheless have a positive value of its own, by widening our sympathies, teaching us toleration of another's point of view, freeing us from the temptation to subordinate humanitarian impulses to the demands of ruthless logic. The organization of American education as a whole, however, along lines that shall give due weight to the frequently conflicting demands of economy, efficiency and idealism, is a colossal task, in which historical reasons prevent rapid progress from being made. The worker in any particular field is compelled to accept the general system as it is, and fit in his specialty as best he can. This predetermined general system consists, so far as law schools are concerned, in the first place of the lower schools, both elementary and "high;" and in the second place of the colleges.

2. *Responsibility Delegated to the Lower Schools*

Without going into the vast problem of what our lower schools ought to teach, it is clear that they already teach much that the practicing lawyer needs to know, and can learn better there than anywhere else. English, political history, arithmetic, the natural sciences, possibly Latin, are examples of subjects which, even though some of them may have peculiar importance for lawyers, are so clearly of value to many other classes of citizens as well, that there can be no question but that their elements constitute not law school, but elementary or high school studies. It is true that they are not always adequately taught to the particular individual who is in a hurry to take up the technical study of the law, and that some law schools, unwilling to turn away students, may endeavor to supply preliminary educational deficiencies themselves in various ways; as, for instance, by including in their professional curriculum courses in these subjects.[1] These, however, are exceptions to the main current of development. The line of division between the law school and the lower school has come to be much more clearly defined than that between the law school and the college. The law school has

[1] Besides the first-year history courses, noted above (page 302) as given by several schools, Georgetown offered in 1891 an optional course in Latin.

A later solution adopted by several schools was to establish preparatory departments.

had enough difficulty in doing justice to the work that it alone can do, without undertaking anything that can properly be done elsewhere. The responsibility that rightly devolves upon those in charge of the strictly professional training is not to duplicate educational facilities which are, or ought to be, more effectively provided by the lower schools. Their responsibility is to see to it that their students have actually made use of facilities already provided. If the lower schools are in bad shape, much cannot be expected; but the more we ask, the more probable it is that in time the machinery to satisfy this legitimate demand will be supplied. Professional schools and lower schools thus react upon one another, to their mutual benefit, by keeping each within its respective province and each assisting the other to do better work. This division of responsibilities has been generally accepted.

So much is simple. The subordinate and technical question then arises as to what the law schools and the state admitting authorities shall do to perform their half of the bargain. What is the nature and amount of preliminary training that shall be insisted upon? What evidence, more reliable than an "interview with the dean," must be presented to show that it has actually been secured? At what date, with reference to the beginning of the law school work, must the general education have been completed, and when must the evidence thereof be presented? It has been found necessary to develop an elaborate technique of examinations and certificates, the crude beginnings of which date from this period.

Columbia started the movement in 1874 by announcing a system of entrance examinations, to go into effect two years later. The requirements were a good academic education, including college entrance Latin (Cicero, etc.). The stringency of the test is indicated by the fact that it effected a reduction of twenty-five per cent in the entering class.[1] It seems fair to assume that this may have been one of the reasons why other schools which followed Columbia's lead made much less rigorous demands. In this same year, 1876, Yale put into effect a requirement[2] of English, history and the text of the Constitution of the United States; Northwestern required a good common school educa-

[1] Averaging the figures for the two years before and the two years after the requirement went into effect. When a change in requirements is impending, the figures for the last year are artificially swollen by students who seek to establish rights under the old rule. The precise figures were: 1874–75, 291; 1875–76, 322; 1876–77, 224; 1877–78, 237. Meanwhile attendance at the New York University law school increased.

[2] Announced 1875.

tion. The following year the University of Michigan and Harvard came into line; the former requiring only a good English education, including ability to make use of the English language with accuracy and propriety; the latter requiring a foreign language and Blackstone, with similar emphasis upon the student's ability to write English.[1] Harvard further weakened its requirement by permitting any one to enter as a "special student;" such students might become eligible for a degree by passing the entrance examination at any time, even after all their law work had been completed.[2] The following table exhibits the situation for all the law schools in the country at the end of the period.[3] College graduates were in all cases admitted without question, and in some of the western schools certificates were beginning to be accepted as an alternative to examination.

LAW SCHOOL ENTRANCE REQUIREMENTS IN 1890

Requirement	Number
Substantially same as for admission to the college, including Latin (Caesar, Cicero, etc.) (*Columbia*)	1
Substantially same as for admission to the college, including Latin (Caesar only) (*Hastings*)	1
Substantially same as for admission to the college, excluding Latin (*McKendree, Ohio State*)	2
A foreign language, English and Blackstone (*Harvard*)	1
Latin (Caesar), history and Blackstone (*Pennsylvania*)[4]	1
Elementary school subjects and Blackstone (*Michigan*)	1
Elementary school subjects, sometimes emphasizing English or history (*Northwestern, Indiana, Notre Dame, Drake*)[5]	4
English, history and Constitution of the United States (*Yale, Wisconsin*)	2
English and history (*Iowa, Kansas*)	2
"Examination" (*Chaddock, Washington University, Willamette*)	3
Number of schools reporting any requirement	18
Number of schools reporting no requirement	43
Total number of law schools	61

[1] The Harvard requirement, announced 1875, in effect 1877, was followed by a reduction in attendance, calculated on the same basis as for Columbia, of 14 per cent, the figures for the entering class being 1875–76, 119; 1876–77, 128; 1877–78, 111; 1878–79, 102. Meanwhile attendance at the Boston University law school increased.

[2] *Annual Reports of the President and Treasurer of Harvard College*, 1883–84, p. 103; 1892–93, p. 141.

[3] *Report of the Commissioner of Education* 1890–91, I, pp. 414–432. It may be safely assumed that the schools not reporting had no entrance requirements. The 1892 Report of the American Bar Association's Committee on Legal Education, published in connection with these data, went no further than to recommend (p. 385) "Better preliminary training, if practicable."

[4] As an alternative to the Philadelphia Board examination.

[5] This was also the standard forced upon the New York schools, other than Columbia, by the new bar admission rules about to be described.

This is not a brilliant record of educational advance for the law schools. It far surpasses, however, anything that the state authorities could show. Ohio, New York and Connecticut were the only states to tread the path that Pennsylvania and Delaware had blazed, and in no case did the requirement amount to much. Ohio, in 1879, merely required its new central board[1] to certify to the applicant's general learning, as well as to his competent knowledge of the law; there was no specific amount of general learning required and no obligation to secure it before entering on the technical work. New York, in 1882, at the instigation of a Columbia College graduate (Lewis L. Delafield[2]), instituted a "law student's certificate," which the applicant must secure by passing, within three months after his period of study began, Regents examinations in six specified common school subjects.[3] Finally, at the very end of the period, Connecticut, while taking precautions against any overlapping of the general and the technical work, accepted as evidence of adequate preliminary education merely a certificate of graduation from any high school, or one of admission to any college or professional school. Experience has demonstrated that, with the prevailing variable standards of high schools, colleges and professional schools, a vague requirement like this is an invitation to evasion, if not to actual corruption.[4]

The principal reasons for this slow progress have already been stated. They were partly the timidity of the schools, afraid to take action that would tend to drive prospective students into law offices; partly the attitude of the profession, which, in addition to an innate tendency to scrutinize carefully any suggested reform, has been particularly slow to recognize the value of general education for a lawyer.[5] It has also

[1] See above, page 103. [2] See above, page 261.

[3] Arithmetic, grammar, orthography, English and American history, English composition and geography. Compare the Philadelphia board requirements, page 314, note.

[4] Whether through sale of certificates by a fraudulent institution, or through forgery by the applicant.

[5] The Harvard reform aroused opposition even in the University Board of Overseers. A Boston periodical published at this time a well-written anonymous article, which took a most sympathetic attitude toward legal reform in general. It attacked the narrow-minded conservatism of prominent members of the bar and the indifference of the well-disposed mass of the profession in language that reads as though it had been written in 1921. Yet it included the following remarkable statements: "In only one way can the entrance examinations to the schools be beneficial; that is, by making them as simple as possible: for it is only desirable to keep out the very ignorant and stupid. A man who has received a good common school education and has by some

been suggested that this attitude is largely ascribable to a failure, on the part of high and low standard men alike, to think the problem through. Sensible men have realized that a sound general education is not by any means indispensable to the law student as such. They have not realized that by encouraging a young man to cut this portion of his education short they are depriving him of something that not only is of as much value to his professional work as is his purely technical training, but that, unlike technical training, once it has stopped, can never be resumed — does not grow of itself, as technique does, in his daily experience as a practitioner. Supplementing these explanations may be noted also the opposition of unreasoning or overcautious democrats. Suspicious of the "college man in politics," who in some communities has allowed himself to get sadly out of touch with the mass of the population, such men have seen in even a moderate requirement of general education a first step toward closing legal practice against all except college graduates, and have opposed the reform not on its own merits but because they distrust its sponsors. Finally, it should not be forgotten that a high school education, which we to-day regard as the irreducible minimum necessary for mental workers, thirty or forty years ago was comparatively difficult to secure. It is only recently that comprehensive free high school systems have been built up by most of our states. Until this had occurred, it was obviously unfair to impose requirements that only a few could satisfy. It was neither possible nor desirable to impose a high school requirement for admission to the Illinois bar, for instance, when Lincoln was a young man. It became possible and desirable only when adequate machinery for supplying general education had been contrived, so that the requirement would not keep future Lincolns out of the profession. Lawyers and law schools cannot inject the needed non-technical element into legal education simply by enacting paper rules. Those in charge of the public school policy of the state must also discharge their share of the joint responsibility.

There is no way of determining the precise moment when a state

means acquired a fair knowledge of Latin, ought to be encouraged and not discouraged from entering the law schools." "Reform in Legal Education," 10 *American Law Review* (1876), 638.

The Chicago Bar Examiners commented in 1879 on the low academic education of applicants, and the following year a general educational requirement was recommended by the State Bar Association, but it was not until 1897 that the court was persuaded to act.

may properly require its lawyers to possess any given amount of general education. The demands of immediate efficiency and of forward-looking democracy cannot be entirely reconciled. Each must yield something to the other, in order that our institutions may be properly run to-day, and yet rest on the enduring popular basis. The resulting system is not a logical deduction from *a priori* principles. It is a practical compromise forced upon us by the imperfections of the world we live in. The differing policies pursued by different states may, however, be profitably compared, and in this connection statistics of school attendance have a certain pragmatic value. It is not without significance that the three states which, between the years 1879 and 1890, began to display interest in the general education of their lawyers are among the twelve which, in the latter year, showed the largest attendance at high schools (including private academies, etc.) in proportion to their population.[1] The rest of the twelve may be said to have been in a sense laggards, in not doing even so much as these three, but the other thirty-five states (excluding Pennsylvania and Delaware, where the general educational requirements varied from county to county) had at least greater excuse for ignoring completely this side of legal education.[2]

[1] In 1890 the precise number of "secondary" students in these jurisdictions per 100,000 inhabitants was as follows:

Vermont	1368	California	1069	Rhode Island	707
New Hampshire	1163	Massachusetts	1068	Michigan	660
District of Columbia	1161	*Connecticut*	746	*New York*	647
Maine	1113	Iowa	716	*Ohio*	639

For the other states the figures ran from Wisconsin, 585, down to Arizona, 47; for the southern states from Georgia, 350, down to West Virginia, 107; for Pennsylvania and Delaware, they were 344 and 473 respectively; for the country as a whole, 473.

Twenty years later there were only twelve states that fell below Ohio's 1890 standard of education, calculated on the same basis. These were all in the South, including as southern states Oklahoma and New Mexico. For the other states the figures ran as high as 2016; the country as a whole showed 1122.

[2] Similar considerations affected the policy pursued by the schools. The twenty-nine jurisdictions containing law schools in 1890 may be classified as follows:

Policy pursued by the law schools	*Number of jurisdictions*	*Secondary school attendance per 100,000 inhabitants*
All law schools had at least nominal entrance requirements (Cal., Conn., Iowa, Mich., Wis., Pa.)	6	1069 to 585; and Pa., 344
Some schools had entrance requirements (Mass., N.Y., Ohio, Kans., Ill., Ind., Ore., Mo.)	8	Mass. 1068; other states, 647 to 376
No school had entrance requirements (D.C., Minn., and all southern states)	15	D. C., 1161; Minn., 520; southern states, 350–107
Total number of jurisdictions containing law schools	29	

CHAPTER XXVIII

GENERAL EDUCATION: THE COLLEGE

1. *Position of the College in the American Educational Scheme*

THE place of the lower schools in legal education is relatively easy to define, and, as these schools are improved, will take care of itself. The rôle that should be played by the college is a much more difficult one to determine. This is partly because the possibilities are so great. A high school can do little more than help a student to select intelligently his chosen career, and meanwhile give him training that will benefit him in whatever career he may decide on. A college can do all this in larger measure, and can also serve two other ends. It can act in the first place as a carrier for those portions of his chosen field of study that are suitable for mature students but are inevitably crowded out of his specialized technical course. We have seen how what I have termed borderland subjects, such as international law, government and economics — topics which on the European Continent are regarded as essential parts of a lawyer's education and constitute a large part of university law courses[1] — tend with us to be relegated by the law school to the college. And, in the second place, to a far greater extent than the high school, the college can also offer studies that are intentionally unrelated to the student's bread-and-butter pursuit — studies that can be justified, not on the ground that they increase his professional efficiency, but on the ground that they operate as an antidote to the dehumanizing tendencies of efficiency pursued as a single aim. To the extent that the English ideal of "culture" seems preferable to that of German *Kultur*, it can be preserved nowhere so appropriately and so surely as in the colleges that were designed to perpetuate this tradition in American life. High schools, and, even more certainly, professional schools, must inevitably devote the larger part of their time to a type of training that corresponds more closely to the general discipline of German *Gymnasia* and to the focused discipline of German universities. An educational system that shall combine, however, all the merits of both English and German ideals is not easy to devise, particularly when the college has these two quite dissimilar functions to perform and when political and economic considerations alike limit the number of years that a professional student can be required to devote to his studies.

[1] Compare below, page 383, note 1.

This is one reason why the proper relation of the college to legal education, and indeed to all higher professional education, constitutes a problem whose final solution we have still to seek. Our ultimate aim is so high that its attainment presents unusual difficulties.

Another reason is the historical one. It has not been possible to organize American education all in one piece, treating it as a whole whose parts shall interlock in a logically constructed scheme. Institutions, each devoted to some special aim, have come first. Through bargaining and adjustment some sort of mutually supporting connection has then been secured. According to the relative influence exerted by the different parties concerned, the process produced different results at different times in different states; and although there has been a general tendency for all to come together, the historical development is still far from completed.

In particular there was for a time a marked contrast between the position of northern and of southern colleges in legal education, due ultimately to the fact that the northern colleges did not pay serious attention to the needs of lawyers until after private law schools had been organized, while in the South the academicians preceded the practitioners. Whereas in the North, therefore, the college acted principally as the foster mother of the law schools, in the South it was in many cases a true parent, and traces of this more intimate relationship long survived. We cannot do justice to the peculiarities of southern law schools if we do not realize that they were much less definitely professional annexes to the college than were those of the North; that their position was for a long time rather that of specialized departments not completely separated. Thus, in Alabama, as late as 1891, law students were urged to take college courses in English language and literature and in ancient and modern languages, simultaneously with their regular work. In West Virginia there was a regular system under which those who took only law work received their degree in one year, while those who in addition took college work stayed two years. In the University of North Carolina the old alternative of a two-year LL.B. course in law only, or a two-and-a-half-year LL.B. course in law and academic work combined, had been changed in 1881 to an alternative between a law course preparing only for the bar examination, which could be covered in a single year, and an LL.B. course comprising additional legal topics and at least two years of college work.[1] The

[1] *Report of the Commissioner of Education*, 1890–91, II, 426; 31 *Rep. Am. Bar Ass.*

general principle that underlay the varying southern provisions was to preserve, so far as possible, the academic element in legal education, though not positively to insist upon it, if a student wished to hurry through. If he were willing to devote as much as four years to his education, he seems commonly to have been able to secure an A.B. and an LL.B. simultaneously.[1]

This was one method whereby a minority of lawyers were enabled to secure the broadening advantages of higher academic education in addition to the prevailingly technical instruction offered to all lawyers in the law school itself. It represented a survival of English traditions of university organization, as originally exemplified in this country in William and Mary College.[2] Its distinguishing characteristic was that students were encouraged to do two quite different types of work at the same time. Its special merit was that law students were continuously exposed to the academic virus, so to speak. They might at any time take up this additional work. If they did not do so themselves, they were in constant personal contact with those who did. Had the mastery of technical American law remained the relatively simple task that it was when legal education was started in the South, the educational relationship of the college to the law school might have developed permanently along these lines. The lower ranks of the profession would have taken, after leaving the lower schools, a brief technical course. The higher ranks would have taken, either in the same schools or in separate schools intended for them alone, a longer course, containing parallel strains of general and of technical training.

As a matter of fact, however, technical American law has become so difficult to master that, first in the northern states and eventually everywhere, those who have had to teach it have been jealous of any division of their students' time. They have felt that the educational system just described encourages diffusion of effort when intensive study is required, and that it often leads also to an overcrowded curriculum. In this attitude they have certainly been right. The impulse back of op-

(1907) 581. The refusal of the University to confer its LL.B. upon students who could not show, at the time the degree was conferred, two years of college work, is not to be confused with a preliminary requirement of general education for admission to the degree course, and has still less in common with requirements for admission to the law school.

[1] So sometimes also in the North, as, for instance, in Notre Dame, where the entire body of students and teachers lived under semi-monastic conditions that fostered unusually close organic relationships between the several departments.

[2] See above, page 166, note 1.

tional parallel college work is a good one, but the actual operation of an educational system thus organized is bad. To the extent that traces of it linger in a few institutions even to the present day, these institutions may fairly be said not to have faced conditions as they are. They are still under the influence of primitive ideals, originating in a college professor's atmosphere, and perpetuated by influences out of touch with the outside world. The successful modern American law school is not an organic outgrowth of the American college. Although greatly helped by its association with the college, it found its true starting-point when its practitioner teachers insisted that during that portion of the student's education which was entrusted to their care technical law should be his sole pursuit. Even the borderland subjects, as to whose practical utility judgments may vary, were less commonly offered by northern than by southern law schools, more commonly offered by northern than by southern colleges.[1] As for "culture," that was emphatically relegated to the preliminary college years. Efficiency, with all its limitations, was erected as the appropriate ideal of the law school itself, and a proper division of functions between the generalized and the specialized parts of our educational machinery was thus encouraged.

For let there be no mistake as to this point: there was no general revolt in these better organized law schools against the college as a factor in legal education. South and North agreed in the main points of their educational programme. These were, first, that there was much training of value to the lawyer that could not be given either by the lower schools or by the law school itself; second, that more or less adequate opportunities to secure this training were provided by the colleges; third, that this college work must, under democratic conditions, be regarded as auxiliary training to be taken voluntarily by the few, rather than as essential training to be required of everybody. Where southern and northern practice differed was simply as to the stage of the student's career when this optional supplementary training might be taken. The northern schools were the first to realize that the latter years of a student's education must be focused upon the more narrowly vocational aspects of his work; that the distinctively broadening portions of his training must come, if at all, in the years before he enters the law school.

[1] In 1891, 48 per cent of the southern schools as against 26 per cent of the northern schools (including two in Baltimore) offered International Law as part of the undergraduate law curriculum. In 14 per cent of the southern schools, as against 31 per cent of the northern schools, the course was offered not by the law school but by the connected college.

This much of the problem may be said to have been solved on rational grounds, logically justifiable and generally accepted to-day. For while there are not wanting extremists on the one side who believe that no one who has not taken a full college course should be permitted to study law, and extremists on the other side who argue that all college work is a waste of time or worse, the definitely established practice lies between. Those who have no temperamental sympathy with democracy still think it unfortunate that any one who has not received the best possible legal education should be permitted to practice law. Fanatical democrats still regard college education as a device whereby a favored class secures benefits denied to the masses. Meanwhile, however, some students continue to gain these benefits and some do not, and those who believe that the mission of the favored minority is not to dominate, but is to lead, regard this division of practitioners along educational lines as not merely inevitable, but sound. So far as concerns the broad underlying principle involved, the present system seems, at least to the writer, entirely satisfactory.

When, however, we consider the detailed application of the principle, then we must all recognize that much remains to be done before the system is organized properly. For here again historical reasons, far more than conscious adaptation of means to ends, explain the precise position that the college occupies in legal education to-day. A four-year college had taken an alien two or three-year professional school under its wing. Two quite different points of view thus became represented in the university faculty, with the advantage of numbers for a long while on the side of the college. The merging of these two points of view into a single "university" policy, that should enable the college to do for legal education all that the college ought to do, has necessarily been an extremely slow process. Among the most unfortunate results of this divergence of purpose and of fundamental aim has been that, until quite recently, no university has been willing to concentrate its energies upon the task of training the minority of broadly educated lawyers that the community needs, and to abandon to institutions with less ambitious aims the preparation of other types of practitioners. Throughout the period under review students were everywhere encouraged to take college work first, and to follow this up with a law school course. But if a student wished to omit the college and to proceed directly from the lower schools to the study of technical law, the authorities preferred that he should secure his prepa-

ration in their own law school rather than in some "inferior institution."

Undoubtedly the universities honestly thought that they were in this way serving the community. They simply failed to realize that this policy tended both to keep these other institutions inferior, and to prevent their own schools from realizing their possibilities to the fullest extent. Obsessed by the theory of a unitary profession and of a uniform preparation and tests for admission to the bar, they tried to develop a single type of law school, open to students whose preliminary training had been most diverse. The problem of properly adapting the technical work to the capacity of the student has thereby been greatly complicated. It is cruel, after having enticed a student into a school, to keep the work on a level to which, through no fault of his own, he cannot rise. On the other hand, it is unfair to the better prepared and more mature man, and against the interests of the community at large, to bring the general level of instruction down to the relatively juvenile plane suitable for many students. So long as the doors are kept wide open for students of diverse capacities, there is no way of avoiding the one without running into the other of these evils.

This ideal of being all things to all men was, however, the ideal in accordance with which all law schools operated, until Harvard placed its school upon a college graduate basis in 1896.[1] There remains to be considered what effect the northern system of academic degrees had in encouraging or discouraging the taking of college work prior to entering the law school.

2. *Modification of the Degree Requirements*

The earliest and most natural solution of the degree problem in the northern universities was to regard the two institutions involved in legal education — the law school and the four-year college — as independent units, each with its own degree. If a student took the law school work only, he received the LL.B. If he prefaced this by a complete college course, he received first the A.B., and later the LL.B. as well. This plan was originated by Harvard in 1817, and possessed the merit of giving an accurate picture of the education that both types of students had secured. They might have one degree, or they might

[1] See below, page 393, for this, the most important reform in legal education initiated by the generation in control between 1890 and the War with Germany.

have two, and there was no confusion as to what either degree meant. Each was definitely and separately standardized, so far at least as any one particular university was concerned. Each indicated that the holder had done the full work required of all whose proficiency was similarly attested by either law school or college.

This plan provided, however, no encouragement to students who might wish to take only a little college work. The tendency of the system was to divide the profession into two widely separated groups — those who had taken the full four years of college work, and those who had taken none. Since four years is a long time to devote to studies whose practical utility is not manifest, this meant that the college-bred lawyer was in danger of being submerged by the men with only high school training or less. The current soon set in this direction even where the college tradition was strongest. The proportion of college graduates attending the Harvard law school, originally two-thirds or more, began to diminish after 1845, and when Langdell took charge was "considerably less than half."[1] In the country at large, the proportion in 1872 was less than a fifth. Thereafter the combined effect of law school entrance requirements which excluded the most badly prepared students, and of the readiness of some of the numerous so-called colleges[2] to grant their degrees on easy terms, was to raise the proportion of college graduates in the total body of law school students to almost a fourth in 1880, and to 28 per cent in 1890. While the population increased between 1870 and 1890 about 50 per cent, and the number of non-graduates attending law schools more than doubled, the number of college graduates more than tripled.[3] Since about 1885, however, the

[1] *Centennial History of the Harvard Law School*, p. 24.

[2] The supply of colleges in the United States, relative to population, reached its maximum during the period between the Civil War and 1890. Before this colleges increased in number more rapidly than the population, during this period at about the same rate, since then, less rapidly. See Dexter, E. G., *History of Education in the United States*, 1904, p. 270, for summary of the United States Commissioner's figures, on which I base these statements. Colleges for women only are excluded. The miscellaneous character of the included institutions makes impossible more than this rough generalization.

[3] Relative attendance of college graduates and others:

	1872	*1880*	*1890*
College graduates	372	758	1,255
Non-graduates	1,604	2,376	3,263
Total attendance	1,976	3,134	4,518

The figures are taken from the Reports of the U. S. Commissioner of Education, which give this information for each law school, from 1872 till 1888, and since 1894. The report for 1889–90 gives the total for all the schools, and a chart showing the changes during the preceding decade (Vol. II, p. 850). For later figures, see below, page 393.

proportion had begun again to decline. As late as 1894, Harvard was the only school in which it was more than a half.[1] As the necessity of extending the law school course itself to three years became generally recognized, it became clear that a total of seven years after the high school was a good deal to expect. What was true in regard to law students was even more true in regard to medical students, where the need of a longer technical course was still more imperative. Unless some change in the degree requirements were made, an increasing proportion of students seemed likely to pass from the high schools directly into the schools of law and of medicine. In the expressive language of President Low of Columbia, the colleges stood in danger of being "syphoned of their intending professional students."

Four ways of averting this danger suggested themselves. One was to make the longer period of study more attractive to the student by favoring the college graduate, in some way, in the final degree conferred. Thus Harvard, for its original optional third year of law, granted (1873 to 1878) the A.M. only to students who already held both the A.B. and the LL.B.[2] Boston University went so far as to announce in 1877 that it would confer the LL.B. only upon college graduates; other students, completing its three-year law course, would receive only a certificate of graduation. This rule would appear, however, never to have been enforced, being changed, in 1879, to the usual LL.B. for all. It was only in the case of the LL.M. and the D.C.L. degrees instituted this year, that the prior attainment of both A.B. and LL.B. degrees was made obligatory.[3] Such devices were obviously futile to meet the real difficulty, which was that, if students could get some

[1] The percentage of college graduates attending the Harvard law school has never, since 1870–71, fallen below 50 per cent. In 1884–85 it reached its maximum, for this period, of 78 per cent, falling thereafter to a new minimum of 66 per cent in 1892–93.

The following table, based on the catalogues for 1874–75 and 1889–90, indicates the extent to which the increasing percentage of college graduates here was due to the growing reputation of Harvard as a national university attracting students from other states either to the law school only, or to both college and law school.

	Increase in fifteen years %
Residents of Massachusetts, not holding a college degree	0
Residents of other states not holding a college degree	23
Residents of Massachusetts, graduates of a college (usually Harvard)	65
Residents of other states, graduates of Harvard	206
Residents of other states, graduates of another college	262

[2] See above, pages 176, 307.

[3] Yale, also, in 1876 had reserved its D.C.L. (not its M.L.) for college graduates. Harvard granted the A.M., from 1884 to 1895, to Bachelors of Arts who had secured the honor degree in law.

sort of degree or certificate in three years, not many of them would stay seven.[1]

A second solution would have been frankly to reduce the length of the college course for all students. Several attempts to make this reduction have been made and in several institutions the proposal has been put into effect. In the leading universities, however, the conservatism of the college faculty and of the college alumni has been sufficient to defeat the idea; so notably at Harvard, after a vigorous campaign in favor of a three-year college course, initiated by Eliot in 1884. The advocates of the shortened college course have seemed to their opponents to be imbued too much with German university ideals, and what with the pressure of high schools from below and of professional schools from above, to be threatening the very existence of the American college. Rather than run the risk of seeing these precious years supplanted by the discipline of a *Gymnasium*, the college faculties have insisted upon retaining at least the outward semblance of a four-year curriculum leading to the A.B. Their unyielding attitude on this point, while possibly justifiable before the late war for the purpose of preserving the college ideal in American life, produced unfortunate incidental results. For in the two devices next to be described it will be seen that, while the advocates of the shortened course have succeeded in compassing part of their aims, they have done so at the cost of throwing the whole theory of academic degrees into confusion.

The third solution was one that Harvard stumbled into, rather than formally adopted. At the very time that alternative plans for shortening its college course were being discussed, it was already possible for diligent students to complete the full college work in three years instead of four. Subsequently this saving of time was facilitated by permission to credit, toward the A.B., advanced work taken in the lower schools, and by a slight reduction in the amount of work required of all college students. The arrangement is now firmly established at Harvard,[2] but has not generally commended itself to other colleges—partly

[1] The same criticism applies to the more recent substitution, by several law schools, of the degree of J.D., in place of the historic LL.B., for college graduates. Compare above, page 169, note.

[2] During the decade 1880–90, twenty-seven students in all received the A.B. in three years, of whom ten in the single year 1889–90. The usual arrangement has been for a student who has completed his college requirements in three years not actually to receive his degree, but to enter the law school as a "college senior on leave of absence." There was one such student in the school in 1890–91, five in 1891–92, and twelve in 1893–92. The first-year law class of 1916–17 was constituted as follows:

because the comparative rigidity of their curricula presents greater practical difficulties than at Harvard, and partly because, on its merits, the arrangement seems to them far from ideal. If the amount of work required for the Harvard A.B. is such that, in order to do justice to it, four years are normally not too long, then the privilege of securing the degree in less time encourages students to carry more work each year than they ought. If, on the other hand, a reasonably diligent student can in three years cover all the work adequately, having due regard for the leisureliness that the cultural ideal demands, then the conventional spreading of this work over a longer period is an encouragement to idling.

The fourth solution, adopted first by Columbia in 1890 and since then by nearly all law schools that have advanced to a genuine three-year course, has been to permit the student, after he has completed the normal requirements of the first two or three college years, to begin his professional school work. He may count this latter, usually at its full value or even at more than its full value expressed in term or semester hours, toward the unsatisfied requirements for his A.B. or B.S. degree, and he may count it toward his law or medical degree as well.[1] By this system of double credits he thus secures the two degrees in six years, or in some institutions in an even shorter period, without being obliged to do additional work during his college years. The objectionable feature of the arrangement is not that it tempts students into devoting only six years to their studies in place of seven; under existing conditions it has seemed necessary to grant them this concession in order to encourage them to stay even thus long. Nor is the plan to be criticized on the ground that it tends to eliminate from the education of professional students part of the ground covered by the four-year college course; if one of the traditional four college years has to be sacrificed to the exigencies of the professional curriculum, it seems wiser frankly to sacrifice the content of the excluded year along with the year itself, rather than, as under the Harvard plan, to encourage a crowding of the old amount of work into a shortened period. What is impossible to justify, however, on any logical grounds, is the award-

Graduates of colleges other than Harvard, 258; graduates of Harvard, 62; completed requirements for the Harvard degree, 14 (18 per cent of all Harvard College entrants); total, 334. *Report of the Commissioner of Education*, 1889–90, II, 805; *Annual Reports of the President and Treasurer of Harvard College*, 1892–93, p. 140; *Harvard University Catalogue*, 1916–17, pp. 253–268.

[1] The many technical variations in the provision, as applied to law students, will be discussed in a subsequent Bulletin of the Foundation.

ing of the same combination of academic degrees—A.B. and LL.B. or M.D.—to the student who has prefaced his professional work by two or three years of college work, as to the student who has taken the full four-year course.

To understand how it came to appear to be right and natural that the integrity of academic degrees should be thus impaired, it will be necessary to trace a long chain of events in some detail. The considerations by which the university authorities were actuated will be found to possess a certain interest and significance, independent of the technical point under discussion.

3. *Origin of the Combined Arts-Law Course at Columbia*

As far back as 1857, the Columbia trustees had attempted to expand their old-fashioned college into a university by dovetailing into it three non-professional graduate schools. The plan was that the student, after completing three years of college work, should spend his senior year in one of these separately organized schools, and receive thereupon the usual A.B. If he should stay two years longer, or six years in all, he would secure the higher degree of A.M. Efforts to put this plan into operation failed completely of their purpose at the time. Their most apparent indirect result was to bring Theodore Dwight[1] into touch with the trustees, thereby leading to the establishment of his professional law school at Columbia on the usual uncoördinated undergraduate basis. Shortly thereafter, similar arrangements were made with the already established College of Physicians and Surgeons, and with a newly founded School of Mines, and the Columbia movement for university expansion seemed to have acquired permanently this entirely different, and less original, slant. Columbia developed into a university composed of a central college and annexed professional schools along the lines usual throughout the entire country. There lingered, however, in the memory of the older trustees the notion that, so far as non-professional studies were concerned, three years of college plus three years of advanced or university work was a better division, for purposes of organization, than four plus two; but as part of the same idea it was felt that this possible reorganization of the instruction and of the instructional staff need involve no change in the number of years required to

[1] See above, pages 152, 158, 185, 186, 192. Dwight was a pupil of Samuel J. Hitchcock of the original Yale law school.

secure the lower degree. The requirement that the last of the four years leading to the A.B. should be spent in one or the other of the graduate schools would give all undergraduate students at least a taste of the more advanced work, and might induce more of them to stay the two additional years required to secure a postgraduate degree than if there were an abrupt transition. The tradition was too vague to constitute in itself a positive force. It represented a state of mind, however, upon which later an able academic politician could play, and was undoubtedly one factor in making his task easier.[1]

Another idea that was in the air in the decade 1870–80 was that the time was ripe for instituting a training school for governmental service, leading up to competitive civil service examinations. This notion, which was in line with the orthodox "reform" thought of the period, happened to be one that appealed strongly to President Barnard of Columbia College.

This was a period also in American life when German educational ideals were in high favor.[2]

Such was the general situation when, in 1876, the trustees revived the old Lieber professorship of History and Political Science[3] and appointed to it a young man of German training,[4] for the express purpose of broadening Dwight's technical law course. Dwight, however, now at the height of his reputation as the foremost law teacher in the English-speaking world, refused to coöperate in any plan that would prevent him from running his own school in his own way. By a masterpiece of diplomacy the younger man changed his tactics, and persuaded the trustees to organize in 1880, under his personal direction, a separate School of Political Science, with a course covering three years, of which the first should be open to college seniors. The plan appealed to certain of the older trustees as a step toward the revival of the old

[1] My attempt to indicate the line of reasoning by which the project of 1857 may be assumed to have commended itself to the trustees is purely a matter of conjecture. For the fact that some of them, because of this project, were predisposed to regard favorably reforms agitated more than twenty years later, see Professor Munroe Smith in *A History of Columbia University, 1754–1904*, p. 228. Unless otherwise noted, all the facts relating to the Columbia development are derived from this source.

[2] "Germanified universities . . . took form out of the educational void about 1880." Dunning, William A., *Annual Report of the American Historical Association*, 1917, p. 352.

[3] Pages 158–159.

[4] John W. Burgess. The title of the chair was expanded to include International Law; its duties were to be divided between the college and the law school in such manner as might be determined.

non-professional university scheme. It appealed to the president on the entirely different ground that the new department was to serve as a professional training school for governmental positions. It appealed to everybody who was interested in German scholarship, as obviously an expression of German university ideals. Finally, it could be made to serve as a vehicle for the broadening of Dwight's law school curriculum by the method of lateral extension, or encouragement to law students to take parallel work, described on a preceding page.[1] Its origin is undoubtedly to be ascribed to this uniting of many different interests in its favor.

The new school proved sufficiently popular with college seniors and with law students to enable it to secure a substantial attendance from these two sources, and thus to tide over complete failure as a training school for the governmental service until, by being strengthened on the side of history and economics, it was in a better position to attract research students.[2] For ten years it occupied a reasonably successful but highly anomalous position in the loose aggregation of Columbia colleges and schools. Quite as much as any member of the university group, it made of Columbia an institution of "multiplied opportunities, but opportunities held more or less out of relation to one another."[3] When, just prior to the inauguration of President Low in 1889, it became clear that a general reorganization of the university was imperative, it was obvious that the school must either lose its administrative independence, or that the same principle must be more generally applied. If advanced work in political science was to continue to be organized in a separate "dovetailed" graduate school, then, in the interests of symmetry, other non-professional studies must be organized in a similar manner.[4] The influence of the Political Science Faculty with the new administration was greater than that of the party which favored the abo-

[1] Page 305.

[2] Under the influence of the idea that it was to combine the functions of a professional training school for governmental positions with those of a German research university, the original degree conferred upon college seniors who took the first-year work was not the A.B., but the Ph.B.; two more years afforded the Ph.D. As it became clear, however, that the future of the school lay entirely in the non-professional field, the first-year studies were allowed to be counted toward the A.B., and between this degree and the Ph.D. the A.M. was inserted, to be awarded to students who had satisfactorily completed the work of the second school year (first graduate year). These devices helped to swell the number of political science students primarily registered in other departments.

[3] *Report of the Commissioner of Education*, 1889-90, II, 790.

[4] Graduate work was being attempted at this time also by the college, and by the professional School of Mines.

lition of the school. Against the wishes of a majority of the university professors, essentially the complete university scheme of 1857 was accordingly revived in 1890–92. Schools of Philosophy (philosophy, letters, and philology) and of Pure Science were added to that of Political Science, all with a three-year course leading to the Ph.D.[1] The first-year work of all three schools was open only to students who had completed three years of college work and, in the case of Columbia College candidates for the A.B., constituted the only non-professional work open to seniors. The disintegration of the university into mutually independent instructional units was guarded against by the institution of a representative University Council, and has been minimized also by two customary features of the Columbia tradition. These were, first, the circumstance that a professor often sat in more than one faculty; Columbia is organized on the "big business" principle of interlocking directorates, rather than on the bureaucratic basis of scrupulously focused responsibility. And immediate government by the president and trustees, in matters affecting the tenure of professors, has at times been more vigorously exercised at Columbia than in some other universities.

This constituted a very neat scheme of organization, so far as non-professional studies were concerned. What, however, was to be done with the undergraduate professional schools that hitherto had dangled loosely from the college, in various stages of administrative independence? The course both of the law school and of the medical school had recently been lengthened to three years. This brought up at Columbia the question already under discussion at Harvard, of whether four years of college work plus three years of technical training was not too much to expect. Already the Harvard medical faculty had suggested that the proper remedy was to permit the A.B. to be granted upon the completion of the longest course of study offered at a professional school, pursued subsequently to three years of college work.[2] President Eliot, commenting on this proposal, had recognized the force of the argument that there was little difference between the character of the first-year medical work and the scientific studies already accepted for the Harvard college degree; and the Harvard law faculty, although the character of its curriculum gave it a much weaker case, had concurred in the

[1] The names that had been selected in 1857 for the corresponding schools leading to the A.M. were Letters, Science and Jurisprudence.

[2] Bowditch, H. P., 9 *Harvard Monthly* (1890), 148.

recommendation.[1] It is true that the proposition had not been approved by the University at large. The idea at least had been suggested, however, and one of the objections to the scheme — that entirely apart from the duplication of credits, professional work has no place in a course of liberal study — had been robbed of some of its force by another Harvard precedent. Under a university rule permitting the A.M. to be awarded on the basis of at least one year of liberal study after the bachelor's degree, studies pursued in either the medical or the law school had been officially declared to be "liberal."[2] To what extent these Harvard developments may have influenced opinion at Columbia, it is impossible to say. What is clear is that conditions were ripe at Columbia as they were nowhere else, for telescoping professional studies into the college years. The desire to effect a symmetrical organization of the entire university led, very naturally, to the professional schools being treated, so far as practicable, in the same manner as the rest. It was not considered practicable at this time to require that all professional students should have three years of preliminary college training. It was, however, practicable, and could be made to appear desirable, that to students who had enjoyed three years of college training, both professional and non-professional work should be open on equal terms. First-year professional studies, accordingly, despite the fact that they were already counted toward professional degrees, were allowed to be counted toward the A.B. also.

The effect of this device upon the integrity of academic degrees may be described in either of two ways. If it be held that because all law students had to take three years law work the LL.B. requirements were unchanged, then the Columbia A.B., instead of always representing four years of non-professional studies, sometimes represented only three. If, on the other hand, it be held that the distinction between liberal and professional studies is of little importance, and that since the Columbia A.B. continued to be awarded only on the basis of four years work, its integrity cannot be considered to have been in any way im-

[1] *Reports of the President and Treasurer of Harvard College*, 1886–87, pp. 16, 80, and *Report of the Commissioner of Education*, 1889–90, II, 804.

As late as 1898, Dean Ames of Harvard favored the "combined course." *Reports of the President and the Treasurer of Harvard College*, 1897–98, pp. 160–165.

[2] The utilization of the A.M. to encourage college graduates to take the full law school course has already been noted (page 330, note 2). It was used similarly in connection with the medical and divinity schools. In addition, a single year's work in a professional school, if not counted for the professional degree, would now yield the A.M.

paired, then the Columbia LL.B., instead of always representing three years of non-college work, sometimes represented only two. The best mathematical plea that can be made in defense of the arrangement is this: Since for A.B. and professional degree work combined Columbia had hitherto never required more than six years, the present device was simply a redistribution of the total work, whereby the law school gained a year at the expense of the college. To a conservative institution like the University of Pennsylvania, however, which lengthened its law course simultaneously with Columbia, it appeared that if it were inadvisable frankly to reduce the A.B. requirements by the normal content of one academic year, the same end had better not be accomplished in this indirect way. This university, like Harvard and a few other institutions, has consistently operated in accordance with the conviction that when, to an alleged four years, there are added three, the total, in common honesty, ought to be seven.[1] The force of this objection has since then been recognized by influential elements in Columbia itself.[2] The device, nevertheless, has not only continued to be employed here, but was later given a wider application. When a fourth year was added to the medical curriculum, the two upper years of the college curriculum were, by a logical extension of the original principle, displaced. And from Columbia the "combined course," as it is usually termed, has spread throughout the country, sometimes with even more generous concessions.

The events recorded in this chapter are typical of the way in which much of our educational system has developed, and may be considered discouraging or the reverse, according to the point of view from which we regard them. If it is essential to academic salvation that our educational leaders should devise and hold to some broadly conceived and

[1] The University of Pennsylvania has followed Harvard in permitting students to cover the complete content of the normal college course in three years.

[2] President Butler of Columbia, arguing in favor of a frank two-year college course, with or without a degree, has characterized the existing system as follows: "The compromise plan as to degrees now becoming so popular, whereby the baccalaureate degree is given either for two years of work in a professional school, or for three years of college study and one year of work in the professional school, is disastrous to the integrity of the college course. It deliberately shortens the college course by a year or two, while proclaiming a four year college course." *Educational Review* (1903), 145, and compare 26 *Rep. Am. Bar Ass.* (1903) 415. This criticism is the more significant, for the reason that the writer had contributed important elements to the scheme of university reorganization put through under his predecessor's administration.

logically consistent plan, then in the matter of college degrees for professional students they have signally failed to rise to their responsibilities. Our traditional four-year college stands between the high school below and the professional school above. The lengthening of both these courses has created a pressure upon it that cannot be withstood. The minimum conditions under which lawyers may be certified, by the possession of a degree, as "college bred," have accordingly been reduced by our university authorities. What these minimum conditions shall be, however, has been determined, not by wise intention, but by what may fairly be called accident. It just so happened that the interplay of opposing academic forces produced at Harvard one solution to this problem and at Columbia another. Other institutions have merely adapted or modified these original models, against either of which objections may be urged. If academic degrees are worth taking seriously, we cannot take permanent satisfaction in the condition into which they have been allowed to drift in this country.

On the other hand, there is something typically Anglo-Saxon in the way in which, when all is said and done, we have managed to move ahead, not sacrificing substance to form, not waiting to make sure that we are eternally right before committing ourselves to something that is not very bad, approaching our problems from the point of view not of the systematic theorist, but of the practical man who sacrifices logical consistency when he must, and when he cannot force his own opinions through adapts his actions to the exigencies of others. Academic degrees are most certainly worth taking seriously. They are the outward manifestation of a university's educational policy, and the traditional weapon whereby its influence is extended through the community at large. They are not worth taking too seriously, however. A much broader problem has yet to receive its ultimate solution: the problem, namely, of how, for law schools that elect to rest upon a college basis, the college may be made to supply the missing portions of a well-rounded professional curriculum, and yet may continue to exert its characteristic liberalizing influence as well. The question of how the student's work shall be properly attested by academic degrees is purely subordinate to this. The major problem has hardly been faced as yet. While it is being worked out, experimentally and illogically, by the blundering processes characteristic of democracy, it is inevitable that the incidental question, of what degrees shall be conferred, cannot receive a satisfactory answer.

PART VII

EFFORTS TO INTENSIFY THE TRAINING OF LAWYERS DURING THE FIRST QUARTER CENTURY AFTER THE CIVIL WAR

CHAPTER XXIX

HARVARD'S CONTRIBUTION TO EDUCATIONAL REFORM

1. *Distinctive Aim of the Harvard Law School*

IN the preceding five chapters I have endeavored to show how the content of legal education was defined during the first quarter century after the Civil War. I have discussed the extent to which the schools, or the admitting authorities, had ceased to identify legal education with the practical training received by an office apprentice from a master of the legal craft, and had brought into prominence two other phases of the preparatory process: theoretical instruction in the law, and general or academic education. I have shown how these three phases, instead of being all treated simultaneously by one institution, tended to be organized separately, each in an institutional group devoted to one particular aim and covering three successive stages in the student's career. However these three stages might overlap—however the lines that divided one from the other might be blurred—their general chronological sequence was already clear. Lower schools and colleges providing academic education were to come first; law schools providing theoretical instruction in the law were to come next; private law offices, or some better and as yet undeveloped agency for providing practical training were to come last, if at all, in the completed scheme of education.

I have also shown that of these three stages the law school, or intermediate one, was decidedly over-emphasized at this time. There was as yet no proper coördination of the law school with the general educational system of the country, such as would protect the future practitioner from the temptation to specialize too soon; nor had any satisfactory method been devised for supplementing the theoretical work of the law school with external practical training. With few exceptions the law schools had utilized the financial resources and the reputation of affiliated colleges to build themselves up at the expense of other essential elements in legal education.

Finally, in the field especially appropriate to cultivation by the law schools themselves, I have distinguished between the law of the local jurisdiction, the law common to all the states, and subjects more remotely connected with the active practitioner's pursuits; and I have shown that these different subdivisions of technical law were differently emphasized by different schools. Schools with limited resources, appeal-

ing to students from only a single jurisdiction, confined themselves almost entirely to local law. Harvard, though beginning to pay some attention to local law, in the main was faithful to its original ideal of cultivating national practitioners' law, and very little else. On the other hand, several schools, notably Columbia, Yale, Michigan and Northwestern, were beginning to combine with this national-law policy an ambitious attempt to broaden in other ways the theoretical curriculum.

From the point of view, accordingly, of these latter schools, the Harvard law course continued to be relatively "narrow." It was not so narrow as that of the purely local schools. If we bear in mind the resources and prestige, however, of the Harvard law school, and recall that it had hitherto been by no means a leader in the movement even to require general education in addition to technical law, the term, though unsympathetic, is fairly descriptive. The explanation lies in the independent and in some respects incompatible aim to which its authorities now addressed themselves. At a time when the general tendency of these other institutions was to diffuse their energies over a wide area, Eliot and Langdell[1] were more interested in intensive cultivation.[2]

In the pursuit of this inherently different ideal, Harvard made various changes in its instructional methods. Considerations of space make it impossible to trace in detail the extent to which, since about 1890, its leadership has been followed by other schools, but in general it may be said that Harvard influence in these matters has been very great and constitutes its distinctive contribution to the development of legal education after the Civil War. It will be desirable to consider first the nature of the problem presented by the condition of American law, and the essential end — primarily one of law reform — to which Harvard devoted itself, in view of this condition. We shall then be in a position better to appreciate, in the next two chapters, the significance of the various mechanical improvements devised as means for accomplishing this end.

[1] Appointed President and Dean in 1869 and 1870 respectively, Langdell was immediately responsible for the particular slant given to the Harvard law school at this time. Eliot's contribution was that of discovering this remarkable man, giving him a free hand and loyally supporting him.

[2] The traditional policy of the Harvard law school, according to a recent official statement, is that of "not attempting all things, but instead attempting a few things of the highest moment and doing them as well as possible." *Centennial History of the Harvard Law School*, p. 168. And compare Eliot's recent statement: "Dean Langdell thought that English and American law should be studied by itself, without admixture of other subjects such as government, economics, international law or Roman law." 33 *Harvard Law Review* (1920), 523.

These improvements were calculated not so much to produce a permanently satisfactory method of training lawyers as to supply the particular sort of training that the immediate situation demanded most. They took the form of testing the student's proficiency by a system of formal examinations; increasing the amount of instruction and altering its distribution among the students and the teaching force; substituting, finally, for older methods of classroom work, the now famous "case method."

2. *Analysis and Systemization of the Law*

The principal reason for the extreme confusion that characterizes even the technical portion of the American law school curriculum is the extraordinarily unsystematic character of American law. I do not now refer to the great diversity in the sources of our law—to the troublesome conflict, namely, between the local or peculiar and the national or generalized law of the states, nor to the additional complication produced by the existence of an independent body of federal law, nor even to the fact that state and federal law alike are partly constitutional, partly legislative and partly declared or interpreted by the judges. This abundance of law-making organs has undoubtedly made it most difficult to classify, in any satisfactory manner, our multitudinous rules or principles of law, from whatever source derived. I refer more particularly, however, to the fact that, for whatever reason, this classification has never been made. The judge-made law was indeed early divided into standard titles, but the topics included under these titles bore little relation one to another, and were impossible to coördinate into a logically constructed general scheme. Nevertheless, the schools naturally adopted these already-provided groupings of legal principles as the units out of which they constructed their own curricula or working classifications of the field of law. Sections of Blackstone, or topics which had been elaborated in special texts, might be subdivided, or might be combined with one another to form larger units, out of which in turn new textbooks would in time proceed. But no comprehensive reclassification of the entire field of technical law, by the application of logically consistent canons of distinction, was or could be made; and once the schools had begun to operate in this fashion, then their own superstructure of refinements tended to perpetuate the unsatisfactory foundation upon which their entire system, or absence of system, was based, with the result that the law school curriculum has remained to this day in a chaotic condition.

No feature of American legal education so arouses the astonishment of a layman, or of a foreign student familiar with the neat categories of Continental law, as does the absence of anything like agreement between our various law schools as to how the law is to be divided and arranged; unless it be the further discovery that no single school has devised its curriculum upon any reasoned plan. Certain "courses" are turned over to certain instructors. The easier ones, or those which are most clearly requisite for later work, are taken by the student during his first year. For his subsequent years, the only general principle that can be discovered is that as many courses shall be offered as the size of the faculty, or the device of offering part of the work in alternate years, permits. In addition non-technical courses may or may not also be offered, according to the policy of the individual school. These various courses are often organized from such different points of view that matter included in one is also included in another.[1] Each instructor defines the content of the particular course assigned to him much as he sees fit and then hurls it upon the defenseless student, who is likely by this process to get a very considerable body of practitioner's law pounded into him in time, on the principle that many feet make a beaten path, even if pedestrians walk upon it in an aimless manner. Occasionally a faculty meeting wonders if the advantage of giving a student "a stereoscopic view of the law, by having him approach the same rule of law from different angles" is not purchased at too great a cost, and accordingly makes some minor adjustment. While they are taking steps thus to minimize the needless repetitions of which they have knowledge, they may accidentally discover that for several years some important topic has not been given at all, owing to their failure to give proper directions at the outset to some newly acquired fellow teacher.[2] For the most part, however, the evils of an unduly congested curriculum are avoided, if avoided at all, by reliance upon the elective system, and upon the new theory which Harvard and its adherents have been compelled to formulate, as to the proper end and aim of classroom instruction.

To what extent this new educational theory is justifiable under present conditions has already been touched upon in passing,[3] and will be considered again with greater fullness in connection with the case method.

[1] So notably Equity is a classification that runs across that of many other courses.

[2] An actual instance quoted to the writer.

[3] See pages 309–310, above.

For the moment let it be noted only that its justification is grounded in the nature of the evil that has to be met. Granted that, our law being as it is, the best practical method of combating its difficulties has been employed in the past, it is obvious that if our law were simpler and our technical school curricula were therefore less confused, more could be accomplished in the way of preparing students not merely to wrestle with but actually to master the law, than can ever be looked for under present conditions.

The explanation of the present condition of American law is, of course, the extraordinary growth which it has experienced during the century, partly for economic, partly for political reasons. Blackstone's *Commentaries* were published just as Lord Mansfield, through his recognition of mercantile customs, was adding an entire new area to English common law. Equity also was just beginning to realize its possibilities as a parallel system of formal judge-made precedents. Legislation was meanwhile gathering its forces and in our own country, immediately after the Revolution, threatened for a moment to supersede all other forms of law. Our public law was largely expressed by this means in the shape of constitutional codes, providing a new foundation upon which Marshall and his followers were to build. Private law did not experience a similar basic reconstruction only because legislatures, then as now, failed to rise to popular expectations. Not creating a comprehensive system of private law themselves, they left a void which the judges, after some experiments with "abstract justice," filled by adopting Blackstone and English precedents and the prior decisions of their particular state. A little later, with the publication of state reports and under the impulse of Dane and Story's Harvard school, it became possible for the judges to pay attention also to precedents established in sister states. In place of what may be termed state common law and equity, there arose thus a system of national judge-made law, which, although it by no means eliminated variations between state and state, was recognized as more or less authoritative by all judges.

Again, after the Civil War the economic structure of the country was rapidly changed. In their effort to adjust their cast-iron chain of precedents to new conditions, the judges were now to some extent influenced by historical considerations. Precedents were no longer regarded as the more sacred, the older they were. Instead, the presumption began to be voiced that, if they were very old, they might be consid-

ered obsolete. Although in general, when changes had to be made, judges continued to preserve the formal continuity of the law by discovering fine-spun distinctions between substantially identical states of fact, they allowed themselves some latitude in frankly reversing ancient decisions. The conception of a system of law confined within the limits of a single state, but reaching back through English antecedents to the roots of time, was thus slowly ripening into that of a national but comparatively modern body of American jurisprudence. Meanwhile the legislatures of each state continued with increasing frequency to cut into this judge-made law with local statutes, usually in a quite irresponsible way that aroused the ire of lawyers trained to master interlocking precedents. When it has been one's life work to disentangle, from a maze of decisions, the settled principles of the law, it is a little annoying to be compelled to reconsider the whole matter in the light of recent legislation. "Certainty" as the end of law assumes to such men an exaggerated importance, for the reason that the substance even of existing law is, because of its complexity, so extremely disputable. Finally Congress and the federal courts, in the domains of private law assigned to them, contributed their quota to the general growth and hence to the general confusion.[1]

Brief and inadequate as is this sketch of a long and complicated development, it will serve to indicate the nature of the problem with which our law schools have had to contend. One can systematize a stable collection of legal rules, but how can one diagram a continually moving and swelling river? Blackstone, building upon the *Analysis* of Sir Matthew Hale, had managed to get the law of his own day all within the covers of his four "Books," and on this side of the water he had not only his annotators, such as Tucker and Sharswood, but also his imitators, such as Swift and Kent. But the publication of Powell's treatise on Contracts in England, in 1790, was the leading event in a development upon which Story, by his policy of separate Harvard publications, placed the seal of his great authority in this country. The attempt to construct a comprehensive classification of the law was frankly

[1] Note also that statutes and constitutional provisions, state and federal, apart from their specific content, give birth to a huge gloss of "interpretations" at the hand of the judges by whom they are enforced. This portion of the judge-made law, based upon constitutional and statutory text, exists in addition to that which has grown in default of legislation.

The development of a similar body of precedents by administrative commissions and boards, instead of by the regular judges in law and equity, is a phenomenon belonging to a later period.

abandoned. Textbook writers, in the schools and out of them, defined each for himself his field of study, and thus crystallized the law into units which subsequent text writers and subsequent law schools were compelled to recognize.[1] There resulted not merely a confused, but also an incomplete, covering of the field. The task of keeping pace with the volume of decisions proved so enormous as to leave time for little else. Writers and teachers labored to enable the practitioner to keep his head above the rising flood. Individual writers or teachers might or might not, in connection with their special topics, pay some attention to relevant statutes, but the most important manifestations of popular law-making activity—the codified provisions of state constitutions—were crowded entirely out of the schools. Instruction in government became a blank at the same time that instruction in practitioners' law became a jumble.

The coördination of this mass of material has in the past been so clearly impossible that there are not wanting those who hold that even in the future it cannot be done and ought not to be tried. The present condition of chaos is regarded by this school of thought as the symptom of a healthily growing law. The ideal of constructing a "system" of the law is stigmatized by them as an attempt to shackle what ought to be left entirely free. Or, to use the fatalistic terminology of the historical school of jurisprudence, steps taken in this direction would be a confession that we are passing into a sterile period of the law, and that our political and moral ideals are tending toward those of the Roman Empire in the time of Justinian. It may be respectfully suggested to these opponents of technical law-reform that if they are satisfied with the present condition of American law, the community at large is not. Steps taken toward remedying its confusion are not likely to be attended with such immediate success as to place a strait-jacket upon the body politic. The danger is rather that unless some action is taken to clarify and simplify the hodgepodge of moss-grown precedent and popular petulance which courts and legislatures have fastened upon us, the people will destroy this existing law entirely,[2] with all its evil and with all its good, not distinguishing between its repellently mysterious shell and the core of justice and of truth that lies deeply

[1] For early American law school curricula, notably that of the influential Litchfield school, see Appendix, pages 453–456.

[2] As, for instance, by inconsiderately substituting for it a comprehensive and supersimplified code.

concealed within it. This necessity for a technical reshaping of the law is entirely distinct from the question of what substantial changes are or are not also needed in order to bring it into harmony with the conditions under which we live to-day. This latter is a question of policy, as to which men will always disagree. But it is rather futile to argue for or against substantial changes in the law, when few of those affected by the proposed reforms have a clear idea, or can secure a clear idea, of what the present situation is. Discussion of new law cannot intelligently proceed, so long as existing law is virtually unintelligible.

Whether Harvard could have done more than she actually did to introduce order into chaos, during the period under review, is a question which in the nature of things cannot be definitely answered. The problem was of such inherent difficulty, however, and Harvard accomplished so much and established herself so definitely as the leader of other schools in a thorough-going analysis of the law, that her actual achievements in any event far outweighed her probably inevitable omissions. What she failed to do was to display any interest in a future synthesis of the scattered titles of the law. The nearest she came to this was Langdell's attempt to build up a prescribed "honor curriculum," consisting of comparatively few titles.[1] These had no clearly defined logical relation with one another, however, and after 1886 this relic of the old prescribed course, which might in time have led to a logically coördinated plan, was definitely abandoned. In her fidelity to what has been aptly termed the "water-tight compartment" organization of the law,[2] Harvard has been as conspicuous as any of her rivals. She deserves credit for prior achievement and for leadership worthily followed since then by other schools, not because she has done anything directly to further a comprehensive reclassification of the law, but because she undertook a type of work that first had to be done before a subsequent synthesis could be profitably attempted.

This necessary preliminary work consisted, in its essence, in a reconsideration of the "principles" (partial generalizations) into which previous writers and teachers had endeavored to compress the scattered and by now often arbitrary rules of law that had either been expressly declared by the courts, or that could be "induced" as the rational basis of their decisions. This restatement of principles involved a certain amount of partial systemization, or drawing of broader general-

[1] See above, page 309, note 1.

[2] Roscoe Pound, *passim*.

izations as well; and under the influence of the school of historical jurisprudence, the conception of a changing and developing law, gradually ridding itself of obsolescent features, also came to the fore. The law to be analyzed and classified was no longer regarded as a flat field, to be studied as it exists to-day. Time was recognized as an element that must be considered in gauging the authority of decisions of other days. The field of law became as it were a body of three dimensions.[1] To some extent this thorough-going working over of the material resulted in changes in the courses or subjects taught. Real Property, for instance, developed into Property in general. Partnership, originally linked with Agency as a related branch of mercantile law, was now bracketed with Corporations, with which it was seen to be logically connected. Certain subjects also were dropped, and — the total number remaining about the same — replaced by others, hitherto more cursorily treated in the abandoned introductory course, or now for the first time appearing as a result of subdividing an older course, or establishing a new focal point, or approaching the mass of rules from a novel angle.[2] On the whole, however, the consecrated categories were retained with little change. The working classification of some twenty courses was accepted,[3] and it was only within these compartments that

[1] The function of the Harvard law school during this period has been well stated by its present dean as follows:

"The law teachers of the last third of the nineteenth century, whose portraits hang in this hall, had a more difficult task. It was for them, as for their predecessors, to expound a received body of law. But they could not take it wholly as they found it, nor could they be content with the relatively crude systematic arrangement of the law which sufficed for their predecessors. In all but a few jurisdictions the system of elective judges had gradually altered the character of the bench; the dockets of our appellate tribunals were choked with arrears; lawyers were beginning to be men of business quite as much as counselors-at-law. Thus the machinery of judicial finding of law was no longer equal to the whole task imposed upon it, while at the same time the expansion of business, the development of industry, and the great mechanical advance that came in the last half of the nineteenth century made the law complex and compelled us to break over the simple procedural categories that had sufficed in the past. The teacher of law was compelled to work out analytical and historical methods; to work over the traditional mass of rules, putting them into logical coherence where possible and pointing out the historical reasons for anomalies that resisted analysis." Roscoe Pound, in *Ezra Ripley Thayer*, Harvard Law School Association, 1916, p. 2.

For a contemporary statement see Holmes, O. W., in *Harvard College 250th Anniversary*, 1886, p. 71, or in his *Collected Legal Papers*, 1920, p. 41.

[2] For details see Appendix, pages 457–458.

[3] *I.e.*, this was the approximate number of courses offered when an adequate teaching force had been secured. During the first few years of the Langdell school, prior to the establishment of the three-year course, the number was much smaller.

the principles were reformulated and recombined. *Parsons on Contracts* was rendered obsolete, but not Parsons' recognition of Contracts as a self-contained and independent subject. Twenty-two different subjects offered by the Harvard law school in 1891 seems a small number in comparison with the forty-six that are taught in the school to-day.[1] It is small in comparison with the number taught by some of Harvard's rivals then.[2] But to throw even this number of courses at a student pell-mell, without any pretense of a branching trunk organization, without even the old introductory course that had at least attempted to give a bird's-eye view of the whole, shows how this phase of legal education was neglected in favor of the immediate and antecedent task that confronted the law schools.

Such, then, were the limitations imposed upon the schools, including Harvard, by the very nature of their problem. The condition of American law combined with the traditional manner in which the law was parceled out among the professors to perpetuate the patchwork character of the curriculum as a whole. Formed by a rough piecing together of rather large-sized scraps, it resembled nothing so much as a crazy quilt, that most inadequately covered the body of the law. Sometimes the patches would overlap in several thicknesses. Sometimes an ugly gap would be left. More important even than this, statutory law and government were largely ignored. While the torso of the legal anatomy was covered more or less, its most rapidly growing portions stuck out

[1] Thirty-six technical (professional) subjects, ten non-technical (jurisprudence, government, etc.). *Catalogue*, 1916–17.

[2] The collection of curricula published by the U. S. Commissioner of Education in 1891 includes no less than twenty-two schools that divided the law into a greater number of items than did Harvard. The following listed thirty or more separate subjects:

	Technical	*Non-technical*	*Total*
Cornell	30	5	35
Columbia	30	8	38
Boston University	32	2	34
University of Iowa	33	1	34
University of Wisconsin	37	0	37
Yale	37	18	55
University of Michigan	38	8	46
Northwestern	46	5	51

At the other extreme stood Emory College, Georgia, which offered only seven subjects. The courses most usually offered were Contracts, Real Property, Torts, Equity, Criminal Law (omitted by Hastings and Oregon), Pleading, and Evidence. An introductory course in Blackstone or Elementary Law was omitted by only eight schools (Harvard, Boston University, Columbia, Pennsylvania, Chaddock, Minnesota, Vanderbilt and Colorado) out of the forty-nine that gave detailed information.

in ungainly fashion.[1] All this the schools did nothing and could do nothing to change. What they did do was to substitute for threadbare material more modern and less sleazy stuff. The garment was basted together much as before, but the individual pieces were infinitely better woven. For this invaluable preliminary reconstruction of the law Harvard deserves the principal credit, on three counts: First, because she inaugurated the movement. Second, because more clearly than her rivals she appreciated the difficulty of the task, and devoted to it an amount of effort commensurate with its importance. Third, because she saw that the best way to improve American law is to improve American lawyers, by whom, as private practitioners, as judges and as legislators, American law is made. Avoiding ineffectual "graduate years"—sacrificing even scholarly publication to the exigencies of a laborious pedagogical routine—she turned out not books, but men; men who were not merely themselves trained to a new understanding of the law, but could fight to make their interpretation accepted generally as the true one.

[1] "The broadening of view which comes from political life was lost. The deepening of knowledge in certain subjects was purchased at the cost of vast areas of ignorance and grave danger of resultant distortion of judgment." Brandeis, L. J., "The Living Law," 10 *Illinois Law Review* (1916), 469.

CHAPTER XXX

THOROUGH COVERING OF A LIMITED FIELD

1. *Increased Amount of Instruction Offered*

SINCE the advent of Story, Harvard has always provided her law students with a greater amount of instruction than she has obliged them to take in order to secure her degree. Because of the complications about to be described, it is not possible to state in absolutely accurate mathematical terms the extent of the total offerings before the Civil War. If we take as unit of measurement, however, one hour a week of classroom instruction, continued during an academic year of between thirty and forty weeks,[1] it would appear that during the early years of the Story régime about fourteen such "year-hours," or between 500 and 600 actual hours, were required to cover the entire course; that this was gradually increased to about twenty year-hours, or something over 700 actual hours, prior to Story's death; and that thereafter there was a slight reduction. Perhaps eighteen year-hours, representing because of the shortened academic year less than 600 actual hours, were offered when Langdell came to the school. During the next twenty years this total was just about doubled.[2] Since the Langdell curriculum was at least no broader than that offered during the Civil War decade,[3] this increase in the time devoted to instruction must all be charged up to the account of thoroughness or depth of treatment. In addition, as we have already seen,[4] the extreme libertarianism of the Story school was abolished. The requirements for the degree were jacked up to almost the entire work offered by the school until 1886, when the offerings again began to run substantially ahead of the requirements.

To offer students an amount of instruction, in excess of what they can do justice to in a conventionally limited number of years, does not by any means contribute to the efficiency of a school, considered merely as a pedagogic machine. This is true whether the student's curriculum is allowed to become congested, or whether, as the lesser of two evils,

[1] As to the gradual reduction in the length of the academic year, see below, page 364, note 2.

[2] See Appendix, page 457.

[3] After Story's death an effort to broaden the curriculum showed itself, among other ways, in the offering from time to time of courses or lectures in International Law, Civil Law, Parliamentary Law, Currency, etc., all ruthlessly eliminated by Langdell.

[4] Pages 307 ff.

the elective principle is introduced, and congestion is avoided by permitting the omission of entire topics or of entire postgraduate years. The amount of instruction offered in a given field is, however, the best measure we can secure of the extent to which a school is attempting to cultivate that field thoroughly — to stir up its subsoil as well as the superficial mould. This particular service was the one that the Harvard law school had undertaken to perform for American judge-made law. How far she led other schools in this particular may be gathered from the following table, showing the amount of instruction offered by ten schools in 1891. Columbia, which tops the list, had just forced out Dwight—who had offered a total of fifteen year-hours—and had placed her new three-year school under the direction of Keener of Harvard.

NUMBER OF YEAR-HOURS OFFERED IN 1891[1]

	Technical subjects (Contracts, Torts, etc.)	*Non-technical subjects (Jurisprudence, Government, etc.)*	*Total*
Columbia	50	16	66
Harvard	42	0	42
Boston University	30	1	31
Cornell			30 +
Northwestern			23
New York University			22½
Illinois Wesleyan	18	0	18
Indiana University	18	0	18
Washington and Lee	17	2	19
University of Virginia	12	3	15

[1] The figures are those published by the U. S. Commissioner of Education, in his special report on law school curricula, reduced to a comparable basis. They seem to refer usually to the academic year 1891-92. The circumstance that out of fifty-six schools included on his list, only ten supplied this information, casts a certain indirect light upon prevailing standards of thoroughness in legal education. Of the two genuine three-year schools not included in the table, the University of Pennsylvania announced in its catalogue (for 1891-92) 22 year-hours. Hastings, in 1890-91, had only a single daily session for each class, five days a week, yielding a total of from 15 to 22½ year-hours, according as the length of the session is reckoned at the usual northern standard, a single hour, or at an hour and a half. The following year this was raised to, apparently, 25 year-hours.

The relative amount of instruction provided by the various law schools to-day constitutes a topic outside the scope of the present Bulletin, involving as it does consideration of such factors as the policy of the school in regard to postgraduate years, failure to give all the work every year, and sectionalizing the larger courses. For purpose of comparison, however, Harvard in 1916-17 offered 52 year-hours in technical subjects in its undergraduate curriculum, that could be credited toward the degree; approximately 4 year-hours that could not be so credited; and 12 year-hours in non-technical subjects in its postgraduate curriculum.

2. Establishment of Annual Written Examinations

What is the duty of a law school in the matter of holding students up to a certain standard of proficiency? Should the instructor examine the state of his student's knowledge each day or each week by a process usually described to-day as "recitation" or "quiz"?[1] Or should an examination be held at the conclusion of each subject? Or should there be an annual examination in the entire work of the year? Or should there be a final examination covering the work of the entire curriculum? Or should there be a combination of these different types of tests? Or may the law school authorities omit the drudgery of holding any examinations at all? The Litchfield school had only a weekly "examination" (oral quiz). In the original Harvard school, Stearns seems to have combined with this system additional examinations, possibly written, after each textbook or topic had been finished.[2] With the advent of Judge Story, however, the only "examinations" were recitations conducted as part of the regular lecture work; and since attendance at the lectures was "wholly voluntary,"[3] this meant that the proficiency of the students was not tested at all. Joel Parker, Langdell's immediate predecessor as head of the law school, justified this system on the ground that the student had to take a bar examination in his own state, and that the LL.B., unlike the A.B., was therefore "honorary."[4]

In contrast with Harvard, the New York schools were obliged, as one of the conditions under which they enjoyed the diploma privilege, to conduct a final examination, which, in the case of Columbia, lasted three days. It is probable that some sort of similar examination was held by most, if not all, schools possessing this privilege. Since at this time the states universally required applicants for admission to the bar to undergo an oral examination, it was logical that schools to which the admitting power had been delegated should institute similar tests. The

[1] The vogue of written examinations has narrowed the meaning of the term "examination," as commonly employed by schools and colleges to-day, so as to exclude an oral recitation or quiz. Occasionally, however, it is still used in its original broader sense. Thus Millsaps College, Mississippi, announced as late as 1917 that the instruction given by its law school will "consist mainly of daily examination of the students on lessons assigned in standard textbooks."

[2] Warren, *History of the Harvard Law School*, I, 334, 339, 354. Written dissertations were also required. These latter eventually became optional prize essays, and in 1870 were abandoned altogether, the money going into scholarships.

[3] *Annual Report on Harvard University*, 1829–30, xxviii; *Annual Report of the University of Cambridge*, 1847–48, 31.

[4] Warren, I, 369.

St. Louis Law School of Washington University was the first school, not possessing the privilege, to establish a final examination.[1] However little these oral tests may have amounted to, judged by modern standards, they exercised an *in terrorem* effect upon the indolent that is not to be despised. It was doubtless with these models, as well as with the college system, in mind, that a contemporary legal periodical characterized the condition of the Harvard law school, so long as no examination for the degree had been required, as "almost a disgrace to the Commonwealth of Massachusetts."[2]

Langdell effectively wiped out this disgrace by introducing an examination system far more rigorous than that in force in any other school. His innovation consisted not in instituting final degree-examinations —these already existed in other schools. It consisted, in the first place, in making the examinations written, in accordance with the practice prevailing in the college, and in the English civil service tests. And it consisted, in the second place, in replacing the single final examination, covering the work of the entire curriculum, by annual examinations, covering the work of each year separately, with the student's promotion to second-year work dependent upon his success in passing first-year examinations. In the technical language of pedagogy, Harvard became for the first time a "graded school," with promotion and graduation determined by written examinations. This system went into full effect at Harvard in the academic year 1871–72. With such modifications in the original plan as are inevitable where the elective principle has been introduced,[3] it now exists in every law school worthy of the name; and the feature of written examinations has become part also of our orthodox bar admission machinery.[4]

[1] School opened 1867.

[2] 5 *American Law Review* (Boston, 1870). The attack was not published until after the new dean had announced his reform.

[3] See next page.

[4] The earliest written bar examinations seem to have been those imposed by the Massachusetts Court of Common Pleas, 1855–59. Following the Harvard reform, the Suffolk County (Massachusetts) Board established written examinations in 1876; the New York Supreme Court required examinations both orally and in writing in 1877.

The effect of the examination system upon the Harvard graduating class of 1874 (the earliest for which complete figures are available) is exhibited in the following table:

First-Year Students, 1872–73

				%
In school preceding year	1	Withdrew without taking June examination	15	*21*
Entered September, 1872	70	Failed in examination	10	*14*
Total	71	Promoted	46	*65*
		Total	71	*100*

Such in general is the genesis and the nature of the examination system which, at the cost of enormous drudgery on the part of the instructor, is one of the most characteristic, and one of the most valuable, features of the modern American law school. On this basis there has been built up an elaborate technique, a detailed discussion of which lies outside the scope of the present Bulletin. It will conduce, however, to the reader's general understanding of the problem, if his attention is called to five subordinate questions that have arisen.

(1) Under the Langdell plan these formal examinations constituted the only tests that the students were obliged to undergo. Is it desirable to supplement this machinery by "recitations," "quizzes," or other occasional tests, with the object both of keeping thoughtless procrastinators up to their work and of providing additional evidence by which a student's proficiency may be tested?

(2) Langdell's plan was calculated for a school which, at that time, had a rigorously prescribed curriculum leading to its degree. Under such conditions the annual examinations covered comprehensively the entire work taken by the class during the preceding year, other than purely optional courses. In the interests of thoroughness, however, the examinations themselves were divided. Each instructor examined the class in that particular one of the prescribed courses which had been taken under him. With the revival of the elective principle in 1875,[1] this naturally led to the examination of each student only in those particular courses that he had taken. In many schools, also, a considerable proportion of the courses now end in the middle of a year. An additional complication is created by the admission to advanced standing of students from other institutions, which distribute their courses differently through the different years. All these influences have tended to disintegrate the two or three comprehensive annual class examinations that Langdell had in mind, and to produce in their place a large number of mutually distinct course examinations, taken by the student

SECOND-YEAR STUDENTS, 1873-74*

Promoted from first year as above		46
Failures redeemed on September examination		2
Advanced standing applicants	19	
Deduct Failed September examination	2	17
Total		65

		%
Withdrew without taking Jane examination	15	23
Failed in examination	7	11
Eligible for degree	43	66
Total	65	100

*Analysis of these figures shows that of those who actually took the first-year examinations (including applicants for advanced standing), 84 per cent passed on the first trial. For the second-year examinations the percentage of passes was 86.

[1] See above, page 307.

as soon as the courses are completed. The colleges, confronted by a similar problem, have devised a regular system, under which each course is valued at a certain number of "units," and the student is considered to have satisfied the requirements for the degree when his disconnected "units," added together, produce a consecrated sum. Should the law schools conform to this prevailing theory of academic education, or should they make some attempt to prevent legal education from degenerating into an uncorrelated mass of scraps? If so, is it a step in the right direction, and sufficient, to hold subject examinations, irrespective of when the individual course ends, only at the close of the academic year? Or should they be postponed until the end of the three years curriculum? Or should they be supplemented, or replaced, by a revival of the original final comprehensive examination?

(3) If the schools adopt the usual college system, under which each course is credited separately toward the required number of "units," what shall be done for the student who, on his first attempt, falls below the required standard in individual courses? Shall he be permitted to make repeated attempts to pass off his failure? Shall he be required to take the subject over again? Shall he be permitted to substitute some other course, subsequently taken, in its place? Shall he be permitted to take each year courses whose aggregate unit value exceeds the minimum total required, in the hope that by trying all he may "skin through" in enough of them?

(4) Should the degree depend upon securing a naked pass mark in all subjects aggregating the required number of units, or should some account be taken of unusual excellence in the student or unusual importance of certain courses? As for instance, should a higher standard of excellence be required in a certain proportion of the units? Or in certain specified subjects? Or, as a reward for unusual excellence in part of the work, should a reduction be made in the total number of units required for the degree? Or should it be enough to pass rigorous examinations in certain indispensable subjects, and let the rest go? Should credit be given for Law Review work, or similar student activities that cannot be tested by formal examinations?

(5) If it is necessary, as it appears to be, that each instructor should grade the examination papers set in his own course, is there any way by which the human equation can be eliminated from the supposedly scientific accuracy of examination grading? What is to be done when an instructor has the reputation of being an "easy marker," and a cer-

tain type of student selects his elective courses on this account? What precautions can be taken against the soft-hearted instructor, who will raise a student's grade rather than let this be the only thing that stands between him and his degree?

And to these five questions the truly conscientious instructor often adds a sixth: "Is there no way in which I can be freed from this intolerable labor, this wrestling with insignificant minutiae, this deadening intimacy with ignorance and mental fog? Is it right that the vitality which I need for effective classroom work should be sapped, and that my ambition to do scholarly work should become each year more impossible of realization?"

In small schools these questions are of no importance. There, by direct personal contact, an instructor with the teacher's gift of sympathy knows with little difficulty what his students have done and can do. In proportion, however, as law schools increase in size, the substitution of mechanical for human tests becomes necessary. That such questions as the foregoing should be asked, and should be differently answered, by the larger schools, indicates how far we are as yet from having perfected our instructional machinery. All our schools, because they recognize their obligation to test in some way the proficiency of their students, move on a far higher plane of efficiency than before the Civil War. But when so many ways of operating the test have been devised, it may be presumed that some ways are better than others.

The examination problem is not a fundamental problem, like that of the proper division of the profession and of the schools into mutually supporting groups. It is not a problem that is intimately involved with our entire social order, and that can be solved only through the slowly effective coöperation of many different interests and elements in the state. But among the various subordinate problems of educational technique it is one of the most vital. It is, moreover, a nicely rounded problem, whose solution can be reached on logical principles, unaffected by political and therefore disputable considerations. It would peculiarly repay a more searching analysis than it has yet received at the hands either of professional educators or of those responsible for devising proper systems of admission to practice.[1]

[1] For a suggested radical change in examination tests, in another field of education, see Mann, C.R., *A Study of Engineering Education*, Carnegie Foundation Bulletin Number Eleven. A considerable technical literature, bearing upon certain phases of the examination problem, already exists, but little of it has been presented in such form as to be practically helpful to legal educators.

3. *Distribution of the Work among the Teaching Force*

In connection with this transformation of the old free and easy school into a graded school, offering a greatly increased amount of instruction, buttressed by a rigid examination system, Langdell also introduced two other mechanistic reforms of some importance. The first of these had to do with the question of how to offer, with a limited faculty, the greatest possible amount of instruction without imposing an undue burden upon the instructors. This always constitutes a grave practical problem for the administrative head. It is all very well to say, "Increase your faculty," but in practice the faculty cannot usually be increased so rapidly as we should like. Even apart from financial considerations, the supply of competent teachers is small. It was especially small in the early days of law schools. One obvious solution, which was commonly adopted by the early southern schools, is to keep the instruction down to the amount that the faculty can repeat, in its entirety, during each successive academic year. Another solution, practicable only in schools attended by a student for more than a single year, is to offer part of the work in alternate years. The occasion for the original introduction of this device at Harvard was the desire to enable the illustrious Judge Story to cultivate, in the interests both of the students and of legal science, as wide as possible an area of the law, without forcing him to work too hard. It was arranged, accordingly, in the early days of his school, that he should give instruction, on the average, during only four hours each week, and should take two years to cover his entire field. His colleague, Professor Greenleaf, taught six hours, repeating his work, which included the more elementary subjects, every year.[1] A student who stayed the full two years had therefore an opportunity to take the full course, no matter when he entered. After Story had worked up the subject of Equity, he repeated this course every year, giving, with extra lectures, an average of a full six or seven hours a week classroom work; but just about this time the pressure upon Greenleaf grew so severe that the alternating principle was extended also to a portion of his work. Thus the device became firmly established, and became an even more prominent feature of the school in the years immediately preceding the accession

[1] Six hours weekly was accepted as the working standard for both professors, the concession in Judge Story's case being that he was permitted to absent himself, for the purpose of discharging his Supreme Court duties, during one of the three terms, without doing extra work while in residence.

of Langdell.[1] At the expense of a systematic presentation of the law to the students, it was made possible for the professors, working a comparatively small number of hours a week, to cover in two years a large amount of law. In the early days there was some justification for this arrangement. When, however, a third full professor was added to the teaching staff, it is difficult to understand why the faculty should have been allowed to reap the entire benefit of the increase. The total amount of instruction had meanwhile been reduced. It was neither restored to its old level, nor was the work repeated at more frequent intervals. All that occurred was a reduction of the teaching burden upon the individual professor to four hours or less a week, "bunched" into two successive days.[2] Bearing in mind that the faculty was also freed from the burden of conducting written examinations, the modern law teacher may well envy the otiose dignity of his predecessors at Harvard.[3]

Langdell at once eliminated all this slackness. He reëstablished the old standard of six or seven hours instruction for each full professor, all the work to be repeated every year, the total to be increased only as it became practicable to increase the teaching force. Although toward the end of this period the alternating principle came again to appear among the third-year electives, it did so only to a small extent, and represented experimental courses or minor adjustments rather than the old attempt to carry a heavy load with an undersized and undergeared equipment.

The old Harvard school had not been the only one to sin in this manner.[4] And it is still a characteristic of weak schools, especially night schools, to give the work of the two upper classes only in alternate

[1] The elementary courses in Blackstone and Kent were repeated every year from the beginning. In addition the catalogues show that courses entitled Equity and Real Property had always been given annually, Constitutional Law annually after 1855, Shipping and Admiralty after 1866. Except in the last instance, however, it is probable that these common names had come to denote distinct courses — elementary and advanced — that had been developed in these subjects. In the years immediately preceding Langdell, Domestic Relations was offered by two different professors in successive half-years.

[2] Parsons and Washburn had four hours a week lecture work each. Joel Parker, the administrative head of the school, lectured two hours weekly, and presided over the Moot Court.

[3] The three law professors also became the most highly paid members of the university faculty, their salaries being raised in 1867 to equal that of the president — $3750.

[4] Benjamin F. Butler, in his original scheme for the New York University law school, solved the problem of conducting a three-year school with only three instructors, by offering the less important subjects only once every three years.

years. So far as Harvard's more serious rivals are concerned, however, their tendency has been rather in the opposite direction, namely, to carry Langdell's toning-up process too far. Faced with the same problem of how to cover an ambitious curriculum with an inadequate teaching force, they are apt to require entirely too much work of the individual instructor.[1]

4. *Reshaping of the Classroom Schedule of Hours*

A further mechanical innovation introduced by Langdell was to reshape the separate compartments into which, for teaching purposes, the law has to be packed.

The development of what is usually known as the "schedule" or "roster" of a law school — the blocking out, that is to say, of the entire amount of time devoted to classroom work during the academic year into separate divisions within which a particular group of students, under a particular instructor, are occupied with a single continuous course of study — was determined at Harvard, in the first place, by the necessity of keeping two professors occupied. It followed from this that, even if it had been intended that the entire curriculum should be covered in a single year, it would have been organized for classroom purposes in two parallel divisions. But furthermore, the definite adoption of a two-year curriculum in 1835[2] made it necessary to separate elementary

[1] The following table, based on the Harvard catalogue announcements, on Warren's *History of the Harvard Law School*, I, 435, II, 87, and on recollections of old students, kindly secured for me by Professor Beale, gives a picture of the development traced in the preceding paragraphs. The figures show the number of year-hours instruction given, excluding moot court work which is inherently incommensurable.

	1835–36	*1839–40*	*1841–42*	*1859–60*	*1879–80*	*1889–90*
Instruction given by one full-time teacher	6	6	7½	4	7	7½
Instruction given by one full-time teacher	4	6	7½	4	6½	7
Instruction given by one full-time teacher	-	-	-	2	6½	6
Instruction given by one full-time teacher	-	-	-	-	6	6
Instruction given by one full-time teacher	-	-	-	-	-	6
Instruction given by one part-time teacher	-	-	-	-	3	2
Instruction given by one part-time teacher	-	-	-	-	-	1
Total instruction given during the year	10	12	15	10	29	35½
Instruction announced as part of curriculum omitted this year	4	3	4½	8	0	½
Total instruction given by the faculty	14	15	19½	18	29	36
Total instruction required to be mastered in order to secure the degree	0	0	0	0	24	27

In 1912–13 three teachers each taught 8 hours, one 7, five 6, one 5, five part-time instructors an aggregate of 8 hours; total, including 19 hours of work duplicated in "sections," 74 year-hours, plus 2 announced but not given this year.

[2] See above, page 173.

from advanced students. Judge Story and Professor Greenleaf[1] each accordingly subdivided his assignment of time into two parts, producing four parallel divisions of the classroom work. That is to say, so many hours weekly were assigned to Story's elementary work, so many to his advanced work, and similarly for the work entrusted to his colleague. The groups of students attending these four divisions were originally known as the four "classes." This terminology, however, was gradually abandoned because of the effect produced upon the schedule by the division of the academic year into "terms," separated from one another by intervals of two weeks or more.[2] Particularly in view of the provision that the degree would be awarded on the basis of one and a half years residence, it was desirable that the studies pursued by each group of students should, so far as possible, come to an appropriate stopping-place at the end of each half-year, in order to permit a subsequent regrouping of the students. Crossing, therefore, the longitudinal lines that ran the entire length of the academic year was a transverse line that divided each of these four divisions into a first-term and a second-term half. Eight compartments or pigeonholes — two tiers of four each — were thus produced. Three hours a week for a half-year were the dimensions of each compartment, when the scheme was most symmetrical, namely in 1839–40.[3]

These eight teaching compartments provide the origin of the many "courses" into which the instruction offered by the Harvard law school is now divided. The work was organized originally, it will be noted,

[1] Appointed to succeed Professor Ashmun (see above, page 142) on the latter's death in 1833.

[2] The American college originally divided its year, in accordance with English tradition, into three terms. In 1838 Harvard substituted the two-term system. The law school conformed to the college.

Incident to the change in terms, the length of the year was reduced from 42 weeks net (16 + Christmas vacation + 13 + spring vacation + 13) to 40 weeks gross (20 including Christmas recess + 20 including spring recess), or about 37 weeks net. In 1869–70 the law school year, a little longer than that of the college, covered about 33 weeks exclusive of vacations. Langdell, by abolishing the break between terms, was able to devote this full number of weeks to classroom work, and secure additional time at the end of the year for his examinations. Since then there has been little change.

[3] Each of the two professors met each of his two classes for an hour a day on alternate days (Warren, *History of the Harvard Law School*, II, 87). The President's Reports indicate that Saturdays were later left free, double work being given instead on Fridays.

In the early Stearns' school "recitations and examinations" lasted two hours, "lectures" one hour, the two being gradually assimilated. Under the three-term system, with Story absent for one term, there had been ten compartments.

to suit the convenience of the students and of the faculty, and not with reference to the particular subjects taught. After the compartments had been constructed, then standard textbooks in the various branches of the law were distributed among them to be taught by the professor or to be replaced by his own lectures, themselves soon to be converted into more modern printed texts. The book on Real Property[1] just filled one compartment this year. Story's two volumes on Equity filled two compartments, constituting a course running throughout the year. All other legal texts or titles thought worthy of attention had to be combined into groups of two, three, or even four, in order to provide a content large enough for a single compartment. Subjects thus combined were taken up by the professor one after the other.

During the next thirty years these teaching compartments developed into the subject-courses, with which we are now familiar, by the following interesting process. In the last year of Story's life the total amount of instruction offered in the school during any one year was reduced.[2] This tended to reduce the size of the compartments. Later, when the faculty was raised to three, the total amount of instruction, as we have seen,[3] was not increased. Instead, each professor taught only four hours a week. Each professor continued, however, the tradition of subdividing his own work into parallel divisions, themselves broken in the middle of the year. This reduced the size of the compartments still further. The largest teaching unit comprised now two hours a week for half a year. At the same time the natural growth in the law was tending to increase the amount of work required to master each textbook or title of the law. While the compartments were growing smaller, the separate subjects to be taught were growing larger. For some of them two hours a week for half a year was none too long. For others, about half this time would suffice. In such cases, instead of having two subjects taught consecutively in a single compartment, it seemed natural

[1] Cruise's *Digest of the Law of Real Property.*

[2] From twelve hours a week to ten (*Annual Report of the University*, 1844–45). This was after it had been found necessary to hold extra classes to cover work that could not be completed during the regular schedule. At the same time it was announced that the regular course would require two and a half years for its completion. After Joel Parker took charge of the school in 1848, ten hours a week for a course intended to be completed, as before, in two years, was announced, and the course itself was somewhat broadened. A greater reliance upon the "alternating" device already described made this possible.

[3] Page 362.

to carry further the process of subdivision, and construct compartments as small as one hour a week for half a year. Langdell found a school in which this assignment of a separate small compartment to one particular subject of study had become the rule. The older plan of tying together several subject divisions of the law into packages, and of piling them one on top of the other in pigeonholes of standardized size, had been abandoned. Instead, interior partitions were run up, so as to fit the pigeonhole to its content.

Langdell accepted, and even accentuated, the subject-course as the unit of instruction. His reform consisted, in the first place, in adopting the previously prevailing number of hours a week allotted to each course—two—as the standard to which, whenever possible, he would conform, and in the second place, in abolishing the term division and running his courses, whenever possible, throughout the year. Since he made no great change in the number of courses into which he divided his curriculum, and continued to assign on the average about the same number of hours a week to each as before, it is mainly this elongation of the individual course that accounts for the increase in the total amount of instruction offered. His case method of instruction required just about a year, where, under the dogmatic method, half a year would have been sufficient.

The system he thus established remained until quite recently substantially unchanged. Occasionally a subject was developed to the point where it could not be compressed into two hours a week.[1] Occasionally, also, a subject was inadequate to fill up a standard course. In such cases, if two subjects could be decently combined, they were so, rather than sacrifice the two-hour ideal.[2] If a half-course had to be constructed, it was taught for a single hour throughout the year.[3] Only in case a quarter course was necessary was a subject permitted to occupy only a single half-year.[4] The standardization of the subject-course at two hours a week throughout the year was accordingly not pushed to an

[1] In 1889–90 there were two full courses (elementary and advanced) in Equity and in Property. Contracts, from the beginning, and Torts until 1882, were given three hours a week for a year, and for a time there was an advanced course in Contracts, replaced later by one in Quasi-Contracts.

[2] Partnership with Corporations, Suretyship with Mortgages (originally combined with Trusts) in 1889–90.

[3] Pleading, Criminal Law, Persons, Jurisdiction and Procedure of United States Courts, in 1889–90.

[4] Conflicts, Legal History, in 1889–90.

extreme. The general tendency, however, has been to sacrifice the free development of legal science to the requirements of a rather rigid mechanical system. Legal "titles," which never possessed much logical significance, have become stereotyped divisions of the law, whose size is somewhat arbitrarily determined. As an aid to efficient instruction the system has the merit of introducing rhythmic regularity into the student's hours. Yet even from this point of view, it is a question whether the Harvard law student does not have to carry too many disconnected subjects at the same time, especially now when under the pressure of bar admission requirements the total number of hours per week which he must take has been increased to twelve. Granted that the necessity of doing justice to several lines of work simultaneously constitutes a valuable training in itself, responsibility for six parallel law courses running throughout the year is a good deal to ask of a young man.[1] It should be an aid to an unprejudiced discussion of this question to realize that no one ever deliberately intended that the student's energies should be diffused to this extent. The number of hours per week to each course first became quite accidentally standardized as two. Then, as the total amount of work required for the degree was necessarily increased, the diffusion incidentally followed.

Recently Harvard has abandoned its traditional policy of continuing courses, whenever possible, throughout the year. Half-courses are increasing in number, and are now given for two hours a week during half a year, instead of for a single hour running throughout the year. "Three-quarter" courses, originally given for two hours a week during one half-year, and one hour a week during the other, are now given for three hours a week during a single half-year. It is a question whether this tendency, which some of Harvard's rivals have carried much farther, to revert to the ante-bellum practice of organizing the units so that they will be completed in a half or even a third of an academic year, is a desirable one, especially when the examination occurs immediately upon the completion of the course. While this obviates the danger of placing too many responsibilities upon the student at one time, it does so at the expense

[1] In the later days of the Story school a student could cover everything that was offered by carrying three different subjects simultaneously during a year and a half, and two during the last half-year. At the beginning of Langdell's three-year course, first-year students carried five subjects, second-year students four, third-year students four, five or six. In 1889–90 the figures were, respectively, five, five, and four or five. In 1916–17 five subjects were taken simultaneously throughout the first year, and at least six in each of the upper years.

of converting his education more and more into a series of scraps. The inherent evils of the elective system are accentuated by the relative ease with which a student can pass off—and forget—successive courses. The fundamental difficulty, of course, is the small size of the present normal teaching unit. So long as this remains unchanged, any gain in breadth can be secured only at the cost of a loss in length, and the other way around. A larger number of courses running for three hours a week throughout the year would seem to be a better plan, both in the interest of the students themselves and as a step toward the much needed reorganization of the law into broader logical divisions.[1]

[1] The following table shows the change in the character of the annual instruction schedule at Harvard since Story first announced his two-year cycle. The figures refer to the division of the teacher's time (excluding that devoted to moot court work) into distinct units, irrespective of the subjects taught. For table showing how particular subjects were combined so as to fill out one instructional unit, or how certain subjects occupied two or more units, in the same or in successive years, see Appendix, pages 457–458.

If the shorter academic year be taken into consideration, the average size of the instructional unit in 1916–17 was almost precisely the same as it had been three-quarters of a century previously—between 56 and 60 actual hours, distributed now usually over the whole year, instead of half a year.

	1835–36	*1839–40*	*1859–60*	*1879–80*	*1889–90*	*1916–17*
Number of units occupying						
3 hours a week for one-third year	10	--	--	--	--	--
3 hours a week for one-half year	--	8	--	--	--	2
2 hours a week for one-half year	--	--	7	--	--	8
1 hour a week for one-half year	--	--	6	2	2	--
3 hours a week for one year	--	--	--	2	1	1
2 hours a week for one year	--	--	--	8	14	19
1 hour a week for one year	--	--	--	6	3	--
Total number of instructional units	10	8	13	18	20	30
Total year-hours offered during year	1	12	10	29	36½	52
Average size of unit in year-hours		1.5	0.8	1.6	1.8	1.7

CHAPTER XXXI

CONDUCT OF CLASSROOM INSTRUCTION
THE CASE METHOD AND PRODUCTIVE SCHOLARSHIP

THE reforms thus far discussed should by no means be overlooked as factors in the success of Langdell's work. Had he accomplished no more than this, he would still have deserved credit as a practical-minded and sagacious administrator, who, without departing from the traditional policy of his school, converted it into a better organized and more efficient educational machine. His chief claim to fame will always rest, however, upon his radical innovation of conducting classroom instruction by the so-called case method, instead of by the method of lecture or text, previously universal.

1. *Lingering Misconceptions in regard to the Case Method*

Since this feature of Langdell's reform programme has already been adequately described in a recent publication of the Foundation,[1] it will not be necessary here to do more than to indicate its relation to the general development of which this constituted only one part, though an exceedingly important one. My excuse for going over old ground even to this extent is that in spite of the flood of discussion to which this topic has given rise, certain curious misconceptions still seem to linger in regard to it.

Among these misconceptions three, in particular, may be mentioned. First, it is still believed by some that the case method tends to encour-

[1] Redlich, Josef, *The Common Law and the Case Method in American University Law Schools*, Carnegie Foundation Bulletin Number Eight, 1914. For criticisms see Baldwin, S.E., "Education for the Bar in the United States," 9 *American Political Science Review* (1915), 437; Beale, J. H., "The Law School as Professor Redlich Saw It," 23 *Harvard Graduates' Magazine* (1915), 617; Kenny, Courtney, "The Case Method of Teaching Law," 36 *Journal of the Society of Comparative Legislation*, N. S. (1916), 182; Kocourek, Albert, "The Redlich Report and the Case Method," 10 *Illinois Law Review* (1915), 321; and Stone, H. F., "Dr. Redlich on the Case Method in American University Law Schools," 17 *Columbia University Quarterly* (1915), 262. The bulletin was fully discussed at the 1915 meeting of the Association of American Law Schools: 15 *Handbook of the Association of American Law Schools* (1915), pp. 77–118, or 4 *American Law School Review* (1916), pp. 91–113.

Compare also Powell, T. R., "Law as a University Study," 19 *Columbia University Quarterly* (1917), 106, and Wigmore, J. H., "Nova Methodus Discendae Docendaeque Jurisprudentiae," 30 *Harvard Law Review* (1917), 812. For earlier discussions of the method, see the bibliography assembled in *Centennial History of the Harvard Law School*, pp. 366–371.

age lawyers and courts to sacrifice principles to precedents, to look for cases "on all fours" with the state of facts before them, instead of for the underlying theory of the law,[1] when as a matter of fact the whole purpose and effect of the method is precisely the reverse: namely, to counteract this all too well-established tendency among superficially trained practitioners. This is an error into which the few remaining opponents of the case method fall. Secondly, overzealous advocates are as mistaken when they harp upon the value of the method in training the student to do, while in the law school, work of the same character as that which as practitioners they will be required to undertake. The implication is that the case method gives the future practitioner virtually all the practical training he needs. How untrue this is has already been shown.[2] Failure to realize this point has led educationalists in other fields astray. Imbued with the belief that classroom instruction should be based upon practical problems analogous to those that will confront the student in the outside world, they adduce the triumphant success of the case method of law teaching in support of their position, when the facts are just the other way. It is only recently that a few case-method law teachers have begun to urge that the present severely theoretical instruction be relieved by more extensive and more systematic use of practical problems in the classroom.[3] Finally, because of the ignorant opposition which the case method has often encountered in the past, a partisan tendency is observable in certain quarters to regard this characteristically American institution as something for Americans to cherish and to preserve, instead of as a disagreeable necessity that we should endeavor to escape from as soon as possible. As an exhibition of

[1] So, recently, a special committee, appointed by the American Bar Association to enquire into the possibility of reducing the volume of judicial decisions, reported: "It is suggested that the case system of legal education is responsible for the eager search for a precedent in point, and when, in the course of time, lawyers thus trained become judges of courts of last resort, the opinions will reflect more and more a 'hidebound' adherence to precedent, while others express the view that the result will be a keener analysis and broader horizon tending to develop a more discerning use of precedents because of a better understanding of them." 2 *A. B. A. Journal* (1916), 623.

[2] See page 285, above.

[3] See Ballantine, H. W., "Adapting the Case Book to the Needs of Professional Training," 2 *American Law School Review* (1908), 135; "Teaching Contracts with the Aid of Problems," 4 *American Law School Review* (1916), 115.

A movement to introduce formal courses in legal bibliography is also grounded in the truth that the case-method school, although it trains a student in the use of cases, gives him little practical assistance in finding them. See Hicks, F. C., "The Teaching of Legal Bibliography," 54 *Educational Review* (1917), 164; Darby, H. J., "A Criticism of our Law Schools," 12 *Illinois Law Review* (1917), 342.

resourcefulness in meeting finally the intolerable situation into which we had allowed ourselves to drift, the method deserves all praise. Given conditions as they are, it is doubtful whether schools and students that can afford to utilize this method would be justified in diverting any appreciable portion of their energies into other lines. The sooner we realize, however, how much has to be left out of a law student's education in order that, by means of this cumbersome method, a supremely important element may be put in, the nearer we shall have approached toward a satisfactory organization of law and of preparation for its practice.

2. *History of the Case Method*

As Professor Redlich has pointed out, the case method has experienced a significant interior development. Carrying his analysis one step further, it will be convenient to distinguish three stages in this growth, discussing first, what was Langdell's general underlying idea; second, how he attempted to work out this idea in view of the existing condition of American law; third, in what ways the actual result differs from that which Langdell intended.

The underlying idea was simply that the judge-made law, to which, as the historic basis and most stable portion of our private law, Harvard proposed to confine itself even more rigorously than before, should be presented to the students in its sources; that is to say, in the actual recorded decisions of the judges, to the exclusion of the numerous text-books of secondary authority. Except on the score of practicability, there was nothing startlingly original in this idea. Professor Redlich has suggested that a superficial analogy between law and the physical sciences, between the case method and laboratory work, may have facilitated the introduction of the method, but quite apart from this, it was a natural expression of the ideal of thoroughness that dominated all Langdell's work, that he should have aspired to take his students to the gushing well-springs of the law, instead of to the meandering streams and lazy pools into which its waters had been collected. How important it is that the student should, if he can, study the law as the judges themselves have declared it, and not as some unauthorized interpreter pronounces it to be, had been emphasized by a young Englishman,[1] forty years earlier. The passage is worth quoting at length

[1] Byles, John Barnard, *A Discourse on the Present State of the Law of England, the Proposed Schemes of Reform, and the Proper Method of Study. Delivered in Lyons Inn*

in order both to bring out one of the cardinal merits of the Langdell method, and to give Harvard a reminder which jealous rivals sometimes assert it needs; namely, that not literally all good things are first thought of in Cambridge.

Note especially the emphasis upon the practical value of case study as a means of developing a legal mind.

> "A very little reflection will convince us that the study of general rules, and common treatises, will help a man nothing in the law. First, without accompanying examples in the shape of cases, he can never fully understand his rules; as well might a man profess to study the *principles* of mathematics, and abjure the assistance of figures and diagrams. Secondly, the way in which a legal rule is formed, from a balance of twenty arguments on either side, is a mystery to him who does not diligently study the cases. What he knows, he knows implicitly, and not in a masterly and scientific manner, like a man who should know from testimony that the three angles of any triangle are equal to two right angles, but be unable to demonstrate that mathematical truth. And not being able to take his rules from their sources, he cannot push them home to their consequences. Thirdly, the habits of mind which he cultivates are not those which are necessary to a lawyer. The general student abstracts and generalizes: the practical lawyer must divide, and distinguish, and decompose. One pursues the synthetical, the other the analytical method. Besides the very essence of law is argument. . . .
>
> "What are we to conclude from all these considerations, but that the successful lawyer must go at once to the fountain head, and draw his knowledge from the reports. . . . When this course has been slowly but perseveringly followed for two or three years, when one case is called up to illustrate and confirm another — when between two cases apparently similar, refined but substantial distinctions are taken — when the principles of the law are thus philosophically and cautiously raised from the details of the law — when the restless roving mind is thoroughly inured and broken in to labor, then the young lawyer begins, as it were, to feel his feet. Soon what was laborious and irksome becomes natural, pleasant, delightful.
>
> "To such a man indexes and digests, and abridgments, and treatises, are now subservient, and fall into their proper rank: direc-

Hall. Being the first of a Series of Lectures on Commercial Law (London, 1829), pp. 38–40.

Byles, who was twenty-eight years old and not yet called to the bar when this was published, became a judge and legal writer of some distinction, and is perhaps best remembered as the last of the "Queen's Serjeants."

tories to sources of information, supplying the unavoidable defects of memory. But he can use both them, and the statutes and reports to which they send him, with a judgment, skill and ingenuity, which the more general, desultory student can hardly conceive. To such a man changes in the law are of little consequence: he is as able at new law as at old, for his ability does not so much lie in the stores or strength of his memory, which any index may supply, as in the reach, and strength, and perspicacity of his disciplined understanding. Practice consummates his talents, and in a few years you see the accomplished lawyer."

These eloquent pleas for bringing students into contact with the original sources of the law were uttered in England in the very year when Story took charge of the old Harvard law school.

Wherein, then, lay the originality and peculiar merit of Langdell? In having the ingenuity to devise and the courage to put through a method of presenting the law in its sources that should be practically effective, in view of the now enormous bulk of these sources. Shortly after 1820, this aspect of American case law had begun to cause general concern. The reports were "becoming alarmingly numerous."[1] "The multiplication of books is becoming, or rather has become, an evil that is intolerable."[2] "Because of the immense increase of bulky reports," there would "most probably be subverted the ancient basis of the jurisprudence of England."[3] We were in danger of being "overwhelmed by their number and variety."[4] The "fearful calamity" threatened us "of being buried alive, not in the catacombs, but in the labyrinths of the law."[5] Unless reporters hold their hands, "the paths of the law will be completely blocked up with the constant accumulation of these enormous masses of type and paper and binding, which they are so busily employed in placing before us to direct our steps, and to which we think it is full likely some future generation, in the height of their vexation and despair, may be tempted to apply the torch of Omar, and burn their way through it."[6] Efforts to help the student, practitioner and judge

[1] Hoffman, David, *Syllabus of a Course of Lectures on Law*, 1821, p. v.

[2] Kent, 1830, quoted by Warren, p. 522. See also his *Commentaries*, I (1826), p. 441.

[3] Du Ponceau, 1821, quoted by Warren, p. 522. Compare Sir Henry Maine, 1856, "Hence that frightful accumulation of case law which conveys to English jurisprudence a menace of revolution far more serious than any popular murmurs."

[4] Story, "Address before the Suffolk Bar, 1821," in *Miscellaneous Writings*, 1835, p. 416.

[5] *Ibid.*, p. 436.

[6] *U. S. Law Journal* (1822), 215. Part of a longer passage quoted by S. E. Baldwin in 4 *A. B. A. Journal* (1918), 41.

to deal with this mass of material on the whole only made matters worse, constituting, as they did, "the numerous digests, abridgments, commentaries, lectures and elementary treatises which swell the immense catalogue, and through which a lawyer is doomed, from infancy to old age, to wade and struggle."[1] Out of this situation the demand for prematurely comprehensive codification arose.

Yet in 1820, when these lamentations began to be voiced, there were less than two hundred volumes of American law reports. When Langdell faced the problem, there were about ten times as many. Since then the number has grown to over ten thousand.[2]

Accompanying this stupendous increase in the volume of reported decisions there had also been a corresponding deterioration in their quality. I do not refer here to the prolixity of judges, which has been ascribed to their habit of dictating their opinions to stenographers,[3] nor to errors due to their delegating part of their work to youthful secretaries. These phenomena appeared in the generation after Langdell. But even in his day, an evil rooted in the very bulk of the law had shown itself. No individual, be he scholar or be he judge, could hope successfully to utilize this mass of material in the ancient spirit of the common law, as a repository of principles in conformity with which all subsequent cases should be adjudged.[4] If he tried, he would fail; and this is pre-

[1] *U. S. Law Journal* (1822), 38.

[2] 9621 volumes were counted in 1916. Davis, John W., 41 *Rep. Am. Bar Ass.* (1916) 761. About 22,000 opinions of the higher courts are now being published annually. 5 *American Bar Association Journal* (1919), 664.

This is in addition to the output of statutes by the legislatures. According to Professor Ernst Freund (9 *American Political Science Review*, 1915, 672), during the years 1911 and 1912 a total of 5154 printed pages of new statutes, state and federal, effective in New York, were turned out. The corresponding figures for Great Britain were 604, and for Prussia 483 pages. By the new method of approach about to be described, the schools have barely managed to escape being swamped by the flood of judge-made or case law. This has consumed all their energies, however. They have been unable to face the further problem presented by the great increase in current legislation.

[3] Mr. W. V. Rowe of the New York Bar has called my attention to this effect of modern time-saving inventions. As to the evil, compare Roscoe Pound in 33 *Harvard Law Review* (1920), 420.

[4] "These accumulated decisions, so various, so subtile, so ingeniously discussed, and so ably adjudicated, are what now constitute the great body of the Common Law and of Equity. This is that imposing mass of law to be found in those ponderous reporters which bend the shelves of a lawyer's library; this is the great treasury, the overflowing storehouse, the exhaustless mine of legal knowledge, from which everything important to the decision of a cause must be drawn, and up to which, as a fountain head, every principle must be traced, to prove that it is not of spurious origin." 1 *U. S. Law Journal* (1822), 38.

cisely what occurred. The confusion of obsolescent law in the older decisions was increased by the confusion of bad law in the newer decisions, and by the confusion of incorrect statements in digests and textbooks. Case law, which had always been chaotic in its arrangement, now became illogical in its substance as well, full of irreconcilable contradictions due to the perpetuated errors of floundering judges. Yet still the theory was preserved that all this mass of material was relevant and authoritative, that a new case could not be decided on its merits, but only in the light of previous decisions made upon a similar state of facts. Hence arose the eager search for the case "on all fours"—the case, that is to say, in which the state of facts was precisely the same. Hence arose the custom of the contending lawyers to marshal as many cases involving as nearly identical states of facts as they could find. Hence arose the fantastic "distinctions" by which each side endeavored to discredit the other's authorities, and which the judges themselves were obliged to recognize, in order to preserve the fiction that American law is "certain" and continuous—that our judges never reverse themselves—that they never agree, on grounds of abstract justice, what their decision is going to be, and then twist authorities into support of their position.[1]

This degradation of the old common-law theory was an evil that, once started, was bound to become steadily worse. The more logically inconsistent became the decisions, the stronger became the temptation to conceal this inconsistency by accentuating the letter rather than the spirit of the case. The greater were the number of decisions that had been rendered, the greater was the likelihood that one could be found that was precisely in point. The more needful it seemed to find this closest possible parallel case, the greater was the demand for access to the largest and most up-to-date collection of decisions. The establishment of the National Reporter System (1879) by a private publishing

[1] "It is interesting to note how often in the development of Anglo-American law the courts have reached a conclusion quite in accordance with the duty then resting upon them of balancing the interests involved; yet when the court is pressed to formulate the grounds of the decision a reason is given which is applicable neither logically nor historically. When later judges decide new phases of the same question they are apt to be led astray by a too literal application of the supposed reason offered for the former decision." Cheadle, John B., 27 *Yale Law Journal* (1918), 893. Professor Cheadle refers particularly to the interpretation of constitutional provisions, in which the general record of the courts, as regards logical consistency, may fairly be termed scandalous.

See also the illustrations of "a hopeless contrariety of decisions," due to "simple logical fallacies," collected by Professor John H. Drake in the single subject of Damages. "The Rule of Law and the Legal Right," 19 *Michigan Law Review* (1921), 365.

house[1] supplied this demand so completely, and its later Century Digest (1896), with its continuations, provided so effective a means of threading, in this spirit, the maze of American judge-made law, that this inherently sterile conception of the common law gradually established itself as one which, whatever its disadvantages, can at least be made to work. Practitioners are now able, by the use of this all but indispensable mechanism, to draw briefs that will pass muster with the courts. It is to the credit of this organization that it has arisen to supply a public demand, and has discharged its responsibilities to the great profit of all concerned. It is, however, a curious commentary upon the condition of American law that justice should now so largely depend, for its successful administration, upon the continued enterprise and industry of a private firm. It is a poor kind of justice that is thus administered, but it is better than justice that is not based upon law at all. Law-book publishers have by this means made practicable a continuing respect for the letter of the law, and so far as the great body of practitioners is concerned, more than this is more than can be hoped for, for many years. The low educational standards of the bench and bar have contributed to this shift of attention from principle to precedent, but the mere bulk of the law is the dominant reason.[2]

The large and increasing number of decisions necessarily forced law teachers, from the beginning, to simplify for their students the undigested material of the law. Hitherto it had been universally assumed that this simplification must take the form of dogmatic pronouncements, spoken or written, as to what the principles of these decisions were. The usual account of the sequence of these earlier teaching methods is that instructors first delivered lectures upon which students were

[1] The West Publishing Company, whose catacombs on the side of a hill overlooking the Mississippi River are not merely a monument to the organizing ability of this firm, but constitute one of the most picturesque features of the living law. Since 1887 their Reporter System has covered the highest courts of all jurisdictions, duplicating, with less delay and expense, the complete collection of official Reports.

[2] "It can hardly be doubted that the rapid accumulation of so large a mass of precedents, and their constant use in practice, so far from strengthening the foundations upon which our jurisprudence as a system is based, has a well-defined tendency to weaken them by the substitution of precedents for principles in the practical administration of justice. . . . It is a matter of common remark among the elder school of lawyers and judges that the younger men at the bar rely too much upon books and too little upon the elementary doctrines by which all cases should be decided. That the result, as affecting both lawyers and judges, is pernicious in the extreme cannot be doubted; that this result is in large measure due to the vast accumulation of reported cases seems equally clear." High, J. L., "What shall be done with the Reports?" 16 *American Law Review* (1882), 439.

required to take notes; and that later these lectures were published as textbooks, upon which, in the interests of greater pedagogic efficiency, the pupils were obliged to recite. The development was not quite so simple. Textbooks appeared originally in England and in this country for the benefit both of active practitioners and of their office-trained students. The basic instruction received from these was supplemented by reading the reports of subsequently decided cases. It was part of the duty of a practitioner to read each volume of reports as it appeared, in the same way that a physician to-day keeps up, through periodicals, with the advance in medical science. When the number of volumes grew to such an extent as to render this impracticable, they were digested in the shape of new textbooks. Writers were thus continuously engaged in the task of overtaking the judges, for the purpose of expounding their decisions in more or less systematic form. These texts, supplemented by such explanatory comments as the instructor could find time for, necessarily provided the basis of instruction for office-trained students. When law schools arose, some of them, notably Litchfield, took pride in making an independent analysis of the law, presented to the students in the shape of lectures; and college professors in general, as for instance Story and Kent, were originally supposed to display their superior erudition by proceeding in this manner. It was impossible, however, to ignore textbooks, especially Blackstone; and when the lecturers began themselves to publish, their schools gradually drifted back to the use of texts. It is impossible to draw any hard and fast lines between early lecture and textbook schools.[1] The two methods differed in relatively unimportant respects. They possessed in common the characteristic that the student was encouraged and obliged to take the lecturer's or text writer's word that the principles had been correctly derived from the decisions.

Now, a correct statement of the principles upon which legal decisions are rendered had become, by Langdell's time, not merely a difficult task, in which a double chance of error lurks: first, that the instructor may state the principle wrongly; second, that the student may fail to grasp

[1] Judge Pearson (see Appendix, page 432) continued to conduct his private school in North Carolina under the lecture system until his death, in 1878. As late as 1891, Michigan and Northwestern divided their curricula into two parts, taught respectively by lectures and by textbooks. To-day, occasional lectures upon special topics are of course delivered in many schools, but with the increased production of textbooks, good and bad, the type of institution that depends upon lectures for a substantial portion of its curriculum has become extinct.

even a correctly stated doctrine. It had become an absolutely impossible task so long as the old theory of the common law obtained, that all decisions of all higher courts were capable of being reconciled "on principle." The old method of treatment, applicable to a body of law that was fairly logical in substance, even though confusingly disordered in form, broke down in presence of the tendency of the courts to drift from reasoned principle to narrow precedent as the basis of their decisions. Langdell opposed this drift, and in order to counteract it inaugurated not merely a new method of teaching, but a new mode of envisaging American law. Insisting that "law, considered as a science, consists of certain principles or doctrines"—convinced that these could be safely taught only from their sources, *i.e.*, previously decided cases—yet confronted with a mass of decisions of which he recognized that "the vast majority are useless and worse than useless for any purpose of systematic study"—he took two boldly original steps. In the first place, departing from the attitude of the mere compiler or precedent worshipper, who treats all decisions as entitled to equal respect, he threw most of them overboard, in favor of a critical selection of those that seemed to him to embody the essential doctrines of the growing law. And in the second place, instead of merely lecturing to his students upon these cases, he insisted that the students should do hard work, preparing themselves beforehand to discuss them by the Socratic method.[1]

The first of these two steps was a measure of law reform. The Harvard law school set itself up as declaring, against the hodgepodge that judges in general had made of the law, what the true law, as laid down by the best judges, really was. And although, judged by our modern standards, Langdell was almost ultra-conservative—although his canon of selection was entirely that of the historical school of jurisprudence—although he was in no sense a believer in the doctrine that judges should let considerations of public policy or social welfare color their views, but regarded the law instead as a fatalistic unfolding of inevitable tendencies—this was none the less a daring step to take. It was an announcement that Harvard proposed to lead rather than to follow the judges, and paved the way for the much more radical exhibition of independence that some law professors have begun to exhibit recently. Langdell's second step, on the other hand — the device of teaching this selected and rationalized body of law by the Socratic method—was a

[1] For Langdell's own statements, see Redlich, *The Common Law and the Case Method*, pp. 10, 11.

purely pedagogical device, though an extremely important one. It recognized the difficulty of the subject-matter, and the inadequacy of a system of instruction in which the teacher does all the classroom work. It was, in a word, in tune with his characteristic ideal of thoroughness.[1] Through the combination of these two features of critical selection and adequate instruction he aspired to send out into practice, and ultimately on to the bench, lawyers that had mastered a workable system of legal principles.

Langdell lived to see his expectations disappointed. Partly, perhaps, because he had underestimated the number of fundamental legal doctrines, and the amount of time required in order to master them; partly because Harvard stood for a while absolutely alone in opposing on the one hand the innate conservatism of most lawyers, and on the other hand the conflicting reforms agitated by a few: he found it impossible to reduce the law to a body of principles that could be mastered in three years. The extension of the elective system after 1886[2] was equivalent to a formal recognition of this fact, and forced the case-method missionaries to justify it on more limited grounds. Shifting their position slightly, as Professor Redlich has shown, they made no claim to be accomplishing what heretofore had been assumed to be the function of every institution of learning—namely, to put its students into possession of some definite field of knowledge, however small. The case-method law school no longer professed to give its students a present mastery of judge-made law. It prepared them merely to master judge-made law in the future.

This was and is the most important service that, under existing conditions, any law school can render, but it is pertinent at this point to recall how much of the curriculum had already been left out. There was no provision for practical training in advising clients or in conducting litigation, but only for the acquisition of theoretical knowledge; no insistence within this domain upon a cultural college foundation, but only upon work done in the professional school itself; no attention paid here to government or borderland subjects, but only to technical private law; no interest here in the statutory enactments of legislatures, but only in the decisions that judges had made; and within the field of

[1] Byles' failure to appreciate the necessity of teaching such refractory subject-matter as case law in this manner marks the distinction between the eloquent theorist and the effective instructor. He utilized cases only as illustrations of principles enunciated in his lectures.

[2] See above, page 309.

judge-made law only the generalized principles of the so-called national law were to be studied, to the exclusion of concrete local rules that might be quite inconsistent. The omitted portions were relegated to after life. The product of any educational system must continue to grow intellectually, to keep up with the development of his specialty after his student days. But a lawyer has to do more than merely keep up with the development of the law; he has to catch up with the law as it was even when he was in the law school. Now finally the scope of formal legal education was narrowed still further. The fiction that even generalized national judge-made law was to be mastered, was abandoned. Portions of it were to be mastered, but large portions of it were avowedly not. American law became for the student not a field to be surveyed broadly, but a thicket, within which a partial clearing, pointing in the right direction, is made. The young practitioner is then equipped with a "trained mind," as with a trusty axe, and commissioned to spend the rest of his life chopping his way through the tangle.

This defect, not in the method, but in the conditions that had to be faced, accounts for the early unpopularity of Langdell's innovation. How far the case-method school falls short of producing accomplished lawyers, at the moment of graduation, can be easily shown. How far this method tends to perpetuate an exaggerated devotion to common or judge-made, as distinguished from legislative or popular, law, may also be plausibly argued. Time only could prove that its limitations were far outweighed by its merits, as preparation for the active competition of professional life; that lawyers who had been trained in this way outstripped, in practice, the product of other methods. When this was realized, and the entering class at Harvard began to grow by leaps and bounds,[1] other schools were compelled to reconsider the problem, and while some stood firm in repudiating the new idea, others began to take it up, either by calling in Harvard trained men as teachers[2] or

[1] The number of entries, 105 during Langdell's first year, fell, after some fluctuations, to 84 in 1882–83. In 1889–90 the figure was 153, and during the next five years averaged 200. The prominence given to the school at the 250th Anniversary Celebration of the University in 1886, and the founding of the Harvard Law School Association in the same year, were powerful influences in spreading the fame of the new method. J. C. Carter's commendation of the method, based on personal experience with office assistants, helped to convert conservative practitioners. *Harvard College: 250th Anniversary*, 1886, pp. 62, 63; and compare 17 *Rep. Am. Bar Ass.* (1894) 383, 467, 476.

[2] University of Iowa, 1889; Columbia, 1890; Western Reserve, 1892; Northwestern, 1893.

by modifying, in this general direction, their own traditional methods.[1]

Slowly what had once been regarded as a Harvard heresy established itself as the ideal of the orthodox. There are few schools to-day that have not been influenced, favorably or unfavorably, by the now acknowledged success of the Cambridge pioneers. If the conditions described in the next section as essential to the successful working of this method are not present, then usually one of two developments has occurred. Either, on the one hand, the method is none the less attempted, and something which is neither a good case-method school nor a good textbook or lecture school results. Or the method is not employed, but the school, whether through ignorance or from motives of expediency, misleads prospective students as to the type of education it provides. Schools that utilize cases to illustrate or develop legal principles previously presented in predigested form, rarely describe themselves for what they are — schools that vitalize the otherwise dead body of textbook information by excellent supplementary features, but schools which none the less move on a secondary plane where students acquire fundamental principles at second hand rather than through their own efforts. As will be shown on a following page, such schools have their points of potential superiority as well as their limitations, when compared with case-method schools. It is a mere juggling with words, however, to pretend, as in their announcements these schools often do, that because they use both textbooks and lectures, and cases in their work, they are therefore using a "combination" of the best features of all methods. The vogue that Harvard methods now enjoy, especially among college presidents who wish their law schools to conform to prevailing styles, is by no means an unmixed blessing.

3. *Case-Method* versus *Textbook Schools*

Three conditions are essential to the successful working of the case method. The first is that the bulk of the students should be not boys, but men, hardened by their previous training to undergo the rigors of severe intellectual labor. So far as concerns their ability to do justice to the work, they need not necessarily be college-trained men. A requirement of a certain amount of college training is, however, or should

[1] *E.g.*, The University of Pennsylvania and Cornell, mentioned by W. D. Lewis as influenced by Harvard, in "The Study of the Common Law," 4 *Reports Pennsylvania Bar Association* (1898), 221–240.

be, if colleges are properly conducted, the most convenient method of securing this result, and possesses two additional advantages as well. Even when the college course does not include, for particular students, topics directly related to the law, it provides the humanistic background which the leading minority of our lawyers ought to have. And by promoting what Judge Story called "the habits of generalization which will be acquired and perfected by the liberal studies,"[1] it serves to keep alive in the case method the spirit and purpose that in the hands of its originator this method possessed. It prevents the method from degenerating into a mere formal discipline, that enables the graduates of the school, after they have mastered the technique of the National Reporter System, to utilize it more effectively than they otherwise could.[2] On the whole, the natural tendency would seem to be that the schools which operate under the case method should be schools which require preliminary college training. More indispensable than this, however, is the necessity that the students should have time to study their cases in preparation for the classroom discussion. If they cannot do this, then the method has ceased to exist. All night schools, for the very reason that calls them into existence, are debarred from using this method. Finally, although any method of teaching presupposes, for its successful operation, an efficient corps of teachers, this condition is peculiarly necessary when the student's ultimate guide is a man and not a book. I believe that while, in the hands of a genuine scholar, skilled in the Socratic method, the case method is indubitably the best, in the hands of a mediocre man it is the very worst of all possible modes of instruction.[3]

When these three conditions exist or can be introduced — when there is a group of mature students, free to devote all their time to their work,

[1] *Miscellaneous Writings*, 1835, p. 436.

[2] Such seemed to me, for instance, to be the effect of the case method as applied by a highly efficient teacher, the late Dean Ashley, to students in day classes of New York University who lacked college training.

[3] As the law teachers of the country know, I have not considered myself qualified to appraise the efficiency of their instruction by invading in a critical spirit their classrooms, and make bold to assert that this is not for any one a fruitful method of "investigating" educational institutions. In the course of my visits to 133 law schools, however, I inevitably received certain general impressions. Among my recollections stands out with especial clearness the picture of a young instructor who, because the work had become "crowded" toward the end of the year, thought it incumbent upon him to "finish the case book" by lecturing upon each case in succession. I hope that the patent despair of his students did not embarrass him as much as it did me.

under the charge of adequately trained and efficient, and—as a necessary means to this end—of highly paid instructors—then the limitations of case-method schools are those imposed upon them by the condition of American law. The schools are obliged to wrestle so hard with a portion of this monstrosity, that they must leave undone much that they would like to do. How unfortunate their position is in this respect may be brought home to some readers by a foreign contrast. Teutonic educational ideals are not supposed to be lacking in thoroughness. Yet an Austrian commission recommended, just prior to the late War, a reformed system of university legal education, in which only a year and a half was allotted to ordinary practitioners' law. This was thought adequate time to devote to the entire body of statutes and of judicial decisions with which the practitioner must be familiar.[1] Our American case-method schools find three years none too long a period in which to prepare their students, not to master, but to be ready to attack, the decisions only. Some supplement their basic case work by "reading courses," by lectures on jurisprudence, by work in legal-aid practice or in local peculiarities or in the Code. Whether they might not go further in remedying the narrowness of their curriculum is a question as to which no one can dogmatize. The limits of development in this direction are soon reached, however. The case method cannot be applied to the professional training of lawyers in small doses. Unless it constitutes the main work of the student, it wastes his time without producing its characteristic effect.[2] Above all things, no policy is so bad as to put every suggested addition into the curriculum, and to trust to the elective system to help the student out. The addition of a fourth year will

[1] This year and a half was to be prefaced by a year of Roman law, canon law and legal history, and followed by a year and a half of political science, political economy and finance. *Anträge der Kommission zur Förderung der Verwaltungsreform, betreffend die Reform der rechts- und staatswissenschaftlichen Studien*, Wien, 1913.

[2] So the device of introducing the case system gradually by appointing one or two young instructors, who conduct their classes in the unsympathetic atmosphere created by their older colleagues, is not a happy one.

It was of some interest to discover that, in response to questionnaires sent out by Mr. Flexner some years ago, certain schools reported that they started with textbooks, and having thus grounded the student in general principles, used the case method in the last year; while one school started with the case method, and used textbooks only when the student was strong enough to stand them. The first device entirely misses the spirit of the method. It has nothing in common with Professor Redlich's suggestion of a very brief introductory course, designed to obviate the needless difficulties that confront the beginner. The second device is more legitimate, but raises the question whether mental discipline and thoroughness should be sacrificed even thus far to mere extent of knowledge. Recently, however, the point has been made

hardly do more than ease the strain. Case-method schools cannot accordingly be justified on the ground that they provide an adequate training for professional life. Their merit is that they provide the best training practicable at the present time, and that through the continued activity of their graduates in the bar and on the bench, in the legislative committee room and in the scholar's cloistered retreat, they are paving the way for happier days, when with smaller effort a broader field can be covered.

Meanwhile, because of their long course of training, preliminary and technical, case-method schools cannot hope to monopolize the educational field. Case-method lawyers are the leaven, but they can never be the lump, in our slowly rising American democracy. Institutions where the three requisite conditions of preliminary college training, full-time work and a scholarly faculty do not exist will render their best service to the community if, instead of aping orthodoxy, they use the textbook and quiz method of teaching law; using, in connection with these, illustrative cases by all means, but not pretending that they are thereby employing the case method. Such schools have a distinct function to perform in teaching the law as others have made it, in place of making over the law themselves. After all, the business of the community has to go on. It cannot wait for the law to be made perfect, before using the law as it has already become. There is an abundant demand in the community for lawyers who are well informed and expert, but not necessarily profound; men whose knowledge is derived at second hand, but is none the less adequate for the purpose in view; men with a more extensive, even though more superficial acquaintance with the actual content of the law, both judge-made and statutory, both substantive and procedural, than young graduates of case-method schools can hope to possess if these institutions are faithful to their own ideals.

Herein lies the opportunity for the textbook schools. Already the products of these two types of education are tending to supplement one another, rather than to compete. In the large cities it is becoming increasingly common for law offices to include representatives of both methods of training, each strong where the other is weak during the first stages of their professional career. It is possible that in time, as

that even for the purpose of developing a legal mind, an exclusively case-method discipline is inadequate. Kocourek, Albert, 8 *California Law Review* (1920), 233.

The question at issue arises, of course, only with reference to a complete course of professional training. Students in college departments of government or political science are undoubtedly benefited by taking a little case-method work in law.

the true function of textbook law schools is perceived and realized, this already beginning actual differentiation of the profession will be recognized in the bar admission rules, each group being given special privileges that the other may not invade; that we shall see a well-defined distinction similar to that drawn between English solicitors and barristers, between French *avoués* and *avocats*, or between our own lower-court and upper-court practitioners in the country's early years, though drawn on different lines, suited to our own independent development. While it is true that the textbook lawyer will still constitute in a sense, as he does now, an inferior grade, to whom the highest professional honors will not be paid, this is the inevitable and proper result of the smaller sacrifice of time and intellectual effort that he has devoted to his preparation. It is by no means certain that as a money-maker he will not excel his more thoroughly and more liberally trained colleague; and because he stands nearer the people, he is more likely to desire and to secure the honors of political preferment. If he resents the subordinate position that to a certain extent he will occupy in the private practice of the law, he may make himself in the legislature the master to whom the expert law drafter is subservient. These schools may look forward, therefore, to occupying a respected and self-respecting position in American legal education.

4. *Productive Scholarship*

The reason why to-day textbook schools do not, as a whole, occupy the position that they should is because there are at present so few satisfactory legal textbooks. Built, as these schools are, upon the products of legal scholarship, instead of upon personal contact with scholarly men, first rate legal textbooks are as indispensable for them as first rate legal scholars and teachers are for case-method law schools. Books which are mere compilations of all previously decided cases, attempts at rational rearrangement of an inherently irrational body of precedents,[1] produce lawyers who are not only steeped in an old-fashioned theory of what constitutes contemporary American law, but who are inadequately trained to put even this theory into practice. Such men meet on the one hand lawyers and judges, liberalized by the case

[1] For a lively description of the prevailing type of all-inclusive textbook, kept up to date by periodically adding new headnotes and "stirring well," see Chaffee, Zechariah, Jr., 30 *Harvard Law Review* (1917), 300.

method, who push their narrow technicalities contemptuously aside. They meet on the other hand the narrower type of case-method lawyer, who descends to playing their own technical precedent-seeking game, and plays it a great deal better. The stronger individuals of course survive, especially in the smaller towns. Personal force and self-development counteract educational defects. But many graduates of these schools either frankly fail at the law, or sink to the lower levels of legal or pseudo-legal work, where they do not come into competition with reputable practitioners. The schools are unjustly held accountable for this state of affairs. Arrogant competitors for student attendance sometimes regard them as engaged chiefly in manufacturing "shyster" lawyers. It would be fairer to recognize that many of them are doing the best they can with their present imperfect tools, and to endeavor to improve these tools, and thereby the schools also.

This is one of the two lines of effort which scholarly institutions need to put forth, if they wish to see their ideals ultimately prevail: not merely to send their own young men out into practice, but also to send out textbooks, embodying their reconstruction of the law, for use in other law schools. The theory of law that lies at the bottom of Langdell's reform must in time dominate, but the preparation for its practice must be conducted by institutions of two radically different types: those that teach law as a science, gradually assuming form out of the inchoate mass of judicial decisions and statutes in which it at present lies; and those that teach the same law, to the extent that it is already formed, as the basis of a thoroughly practical vocation. The scientifically grounded lawyer can in time, if he has the ability, overtake the other. There is no danger that he will be crowded out of the profession, even if the differentiation now foreshadowed does not soon occur. But while he is supplying for himself his many gaps in immediately available information and expertness, young men qualified to conduct the routine business of the law are imperatively required. They can be best supplied by institutions which accept the labors of legal scholars as authoritative, and utilize them in that portion of their fuller curriculum which deals with the general principles of national judge-made law. Accepting these principles at second hand, the student does not grasp them as completely or as accurately as if he had dug them out for himself, but at least he grasps the underlying conception of law as a body of selected principles, rather than as a mass of uniformly authoritative yet mutually inconsistent precedents. And in proportion

as all lawyers and all judges are trained to adopt this same point of view, this portion of our law which has passed into the form of scholarly textbooks, representing the authority of the leading schools, will become as nearly "settled" as in a developing condition of society it ought to be. Subject to legislative change, textbook law will be respected also by the courts. It will no longer be as necessary as it is to-day for practitioners and judges to go back to the original cases, because they cannot place any faith in the textbooks. The textbook student can thus be enabled to master a body of the law that is at once sound, from the point of view of the future development of our law, and definitely useful to him for the immediate practical ends that he pursues; and because this law is expressed in systematic form, he can master it with relative ease. The time thus gained he can devote, to an extent that is at present impossible for case-method schools, to other features of legal training.

The service that may be rendered in this way by the case-method law schools need not necessarily be all performed by members of their teaching staff. Their graduates also may do their share to replace "scissors and paste" texts by scholarly bodies of selected doctrine. As a rule, however, this labor of authorship can best be performed by those who know the sources best, because they are already engaged in presenting them to others. Upon these university law school teachers a double responsibility therefore rests: that of working out, with their own students, in a rigorously critical spirit, the essential principles of modern law; and that of systematizing these principles when found, to the end that they may be readily accessible to other law schools and to the judges. In a word, the method of Langdell needs to be more consciously combined with the original ideal of Story. To a certain extent it is already so combined. Numerous exponents of the case method, beginning with Langdell himself, have as a matter of fact published texts. Articles contributed to legal periodicals, conducted by many law schools since the establishment of the *Harvard Law Review* in 1887, are a step in the same direction. The texts are of unequal merit, however, and the periodical contributions deal with such narrowly defined topics, and have such a limited circulation among the profession at large, that they can hardly be regarded as more than source material for future textbooks.

There seem to be three main reasons why, in spite of our magnificent apparatus of law schools with their highly efficient instruction,

the published output of productive scholarship in technical American law is at present small. The first and fundamental reason is of course that the preliminary stage of working over the exceedingly refractory raw material, and developing scholars competent to handle it, had to be passed through, before synthesis could profitably be undertaken. To put it bluntly, we have not had in our law schools until recently many men — we probably have not many even to-day — who knew enough about the law to be able to produce good textbooks. Two other causes, however, may be mentioned as having served to check the development. The number of classroom hours assigned to the individual instructor who teaches by the exceptionally arduous case method is often too great to leave him time and energy for productive work. And in addition there is sometimes a hazy feeling that the production of texts, which facilitate dogmatic instruction in the law, is opposed to the main purpose for which these schools exist — that even in the school itself, it is difficult to persuade students to go back to sources and formulate the principles for themselves, when the work has already been done for them by the instructor. It may be suggested to those who carry their aversion to dogmatic instruction to this doctrinaire extreme, that they need have no present fear that the reduction of judge-made law to textbook form will do away with their cherished method. The process may spoil particular topics for purposes of case-method instruction, but for many years there will still be wide reaches of unsystematized case law, providing abundant material for training the student's mind. In time also the method may be extended to include a critical study of the textbooks themselves, in place of the cases, for the purpose of building up a still broader synthesis, freed from the limitations of the present division of the curriculum into watertight compartments. Even if we should be so hopeful as to look forward to a time when contemporary law will be completely systematized, subsequent decisions of the judges, based upon this system, will still have to be reconciled. The greatest service that case-method schools can render is consciously to endeavor, by a process that under the most favorable conditions must be painfully slow, to express American law in such a form that inordinate effort on the part of both students and teachers will no longer be required in order to produce the unsatisfactory results yielded to-day even by our best law schools.

PART VIII

RECENT DEVELOPMENT AND PRESENT CONDITION OF LEGAL EDUCATION

CHAPTER XXXII

DEVELOPMENTS BETWEEN 1890 AND THE WAR WITH GERMANY

THIS chapter purports to do no more than to cover in a cursory way ground that will be traversed in greater detail in a subsequent Bulletin of the Foundation. The events of the last quarter century possess especial significance only for those who are charged with responsibility for the development of legal education in its technical details. Seen in its proper perspective against the background of our preceding history, this recent period has been of relatively small importance.

1. *A Period of Mechanical Imitation*

The beginning of a new phase in the development of American legal education was marked by at least four events. One was the injection of new blood into the American Bar Association's Committee on Legal Education and Admission to the Bar, in 1888 and 1889; this was followed by vigorous reports in 1890, 1891 and 1892, and by recommendations adopted in this latter year by the Association. Second, as a result of this newly aroused interest, the Association organized a Section of Legal Education in 1893; this led at the end of the decade to the establishment of the Association of American Law Schools, which introduced further complications into what may be broadly described as the central supervisory machinery of legal education. Third, in 1888 Columbia and the University of Pennsylvania lengthened their law school course to three years,[1] and in 1890 Columbia adopted the optional six-year academic and professional course already described;[2] this provided a working model for university day law schools that was subsequently followed by many institutions. Fourth, in 1888 night law schools were started simultaneously in New York City, in Chicago, and in the University of Minnesota; since then this type of school, which hitherto had operated chiefly for the benefit of clerks in the government departments at Washington, has come to be of increasing importance in virtually all our large cities. To this list of positively influential phenomena, all occurring at nearly the same time, should perhaps be added:

[1] Page 178.

[2] Pages 333–338.

fifth, a sudden increase in the number of new law schools started—forty-three in the single decade 1890–1900, as compared with twenty-two during the decade preceding;[1] sixth, the acceptance, by an increasing number of practitioners and law school authorities, of the Harvard case method as deserving adoption or imitation elsewhere;[2] and seventh, the impetus given to the central board system of bar examinations by its adoption in New York in 1894.[3] Various causes, in short,—probably all finally attributable to the coming of a new and more imitative generation into power,—contributed to make the activities of those interested in the development of legal education take a somewhat different form from that which had characterized the quarter century immediately following the Civil War. The creative forces that had been set loose by that upheaval had exhausted themselves. The quarter century that elapsed until we were again stirred to the depths was singularly unproductive of new ideas. Instead, there was an emphasis upon machinery, and an attempt, by means of this machinery, to perfect, to standardize, and to force into more general use devices that had originated during an earlier period.

Through the operation of this machinery, the standard of law school work and of bar admissions, so far as either can be appraised in mechanical terms, has been very generally raised to the level already attained a generation previously in a few states and schools. Notably a three-year course of study, tested by written examinations, and resting upon a requirement of high school education, represented an exceptionally high standard in 1890. A standard at least as high as this is now almost universal among law schools, and is approximated in many bar admission rules, though in all three of the features noted the states have lagged decidedly behind the law schools. The disparity is most marked in the matter of requirements of general education.[4] Over half of the states now pay some attention to this important feature of a lawyer's training, but very few proclaim, and rigorously enforce, the requirement of a full four-year high school course, to be completed before the prescribed period of law study begins. Many of the schools, on the other hand, have passed beyond this original minimum. The most important independent action taken by any law school during

[1] Appendix, page 444.

[2] Pages 380–381. [3] Page 103.

[4] As to state requirements of three years study, see above, page 92; as to written examinations, pages 101 and 356 ff.

this period was Harvard's revival, in 1896, of Chief Justice Parker's original idea of restricting admission to college graduates.[1] Since then, one other school has gone as far as Harvard in this respect,[2] while a large number have taken an intermediate position, ranging all the way from the requirement of a college degree for admission subject to the operation of the combined-course rule for their own students,[3] or three years of college work from all applicants,[4] down to two years[5] or one year of college.[6]

The effect of this movement to increase entrance requirements has been not to increase the amount of college education obtained by law students as a whole,[7] but to introduce a new and important distinction between different types of educational preparation characteristic of different types of schools. The framers of our bar admission rules, however, have continued to impose uniform examination tests upon all applicants, however prepared. They have been blind to all distinctions of type, whether of this sort, or whether arising from differences in method of instruction, or in the kind of law, local or national, emphasized in different schools. Simultaneously, a great increase in the number of evening law schools has brought to the front a distinction between two general types of applicants that is even more obvious, and that has been equally ignored.

An account of the earlier origins of evening, or, more accurately expressed, part-time, instruction in law has purposely been omitted from previous chapters in order that all the elements that combined

[1] See above, page 138. Between 1896 and 1900 students who had attained senior standing in Harvard College were also admitted into the school. This privilege, abolished because of the poor showing made by students who attempted to carry college work simultaneously with their law studies, must not be confused with the continuing admission of "seniors on leave of absence" (see above, page 331), who have completed all the requirements for the college degree.

[2] The University of Pennsylvania since 1915. In 1919 Northwestern instituted an option between a college degree leading to a three-year law course and three college years leading to a four-year law course. The University of Pittsburgh has announced a college graduate requirement, to take effect in 1922.

[3] Stanford 1899–1912; Columbia 1903–11; Western Reserve since 1911; Yale since 1912.

[4] University of Chicago since 1902; University of California since 1906; Columbia since 1911; University of Pittsburgh from 1919 till 1921.

[5] Twenty schools in 1916–17, twenty-three in 1920–21.

[6] Seventeen schools in 1916–17, twenty-one in 1920–21.

[7] The proportion of college graduates in the aggregate attendance at all law schools fell from 28 per cent in 1889–90 to 19 per cent in 1915–16. Graduates increased from 1255 to 4451; non-graduates from 3263 to 18,542. Compare figures quoted on page 329.

to produce this important contemporary development may now be considered together.

2. *Differentiation between Institutions demanding the Entire Time and only Part of the Time of their Students*

In law schools situated in small towns, such as Cambridge,[1] instruction was naturally offered from the beginning during the regular working hours of the day, as in other departments of the university. Students had no access to a sufficient supply of law offices. Subject to the usual undergraduate distractions, they gave their full time to their law school work. The requirement of a certain period of study in the school, for the purpose of obtaining the degree, signified that this much time was supposed to be entirely devoted to the study of the law. Whether it actually was all thus devoted depended of course upon the standards maintained at the particular institution. If any law office training was secured, this occurred before or after the student had entered the school. Under the original Harvard rule,[2] college graduates were obliged to supplement a period of eighteen months in the law school by an additional period of eighteen months office work. This yielded a total of three years pretty full law work in school and office combined. So much for the small town situation, the details, of course, varying widely in the different jurisdictions.

In the larger cities, there was an equally natural tendency for instruction to be given at irregular hours, for the convenience primarily of the instructors who, as judges or practitioners, had other things to do. Thus we know that in the eighteenth century Charles Chauncey of New Haven [3] used to meet his students before breakfast. James Wilson, in the College of Philadelphia, lectured after six p.m. For fifty years lectures in the Cincinnati Law School were held principally in the evening. Later they were held in the afternoon. Given the defective means of artificial illumination and ventilation, the afternoon was usually preferred as the classes grew in size; so at Dwight's Columbia school, and in the University of Pennsylvania until recent years.[4] The

[1] For description of Cambridge during the early years of the Harvard law school, — "a peaceful country town — cut off from Boston by its situation — independent, quiet and studious," see Warren, *History of the Harvard Law School*, I, 316–327.

[2] See above, page 167, note 3.

[3] Pages 129, 130, and Appendix, page 431.

[4] In 1851, however, Sharswood's lectures in the University of Pennsylvania were delivered in the evening.

precise time of day is less important than the significant fact that normally these city schools were held after (or before) "hours." While the arrangement was primarily to suit the convenience of instructors, it also fitted in well with the tradition of law office study. The bulk of the students were clerks in law offices, who supplemented their practical routine by systematic work in the school. This division of labor grew up naturally. It was encouraged by the unsuccessful efforts of Du Ponceau's Philadelphia Law Academy, and of the New York Law Institute, to give law lectures to younger practitioners.[1] After the English Incorporated Law Society had established its lectures for law clerks in 1833, and Attorney-General Benjamin F. Butler had published his *Plan for the Organization of a Law Faculty in the University of the City of New York* in 1835, the idea may be said to have been in a sense self-conscious and standardized. In this thoughtful study of the problem of legal education, Butler distinguishes sharply between country and city schools. The law school as an office adjunct he conceives to be the type suited to the city. His project is of especial interest for comparative purposes, because of the number of years he wished the course to include — namely, three. Had his plans been carried out, the total work demanded of the student, so far as this is capable of being quantitatively measured, would have been the same here as for college graduates under the original Harvard plan, and perhaps the distribution of the work between office and school would also have been the same. At Harvard, however, the total was to be made up of eighteen months solid office work and eighteen solid months in the school. In New York, the student was to divide his time each day between the two types of work. No one can say whether Butler's school might not have been the equal of Stearns' school at Harvard.

At this point, however, came the crash in bar admission standards. This affected all schools adversely, but in its ultimate effects it proved especially disastrous to the early type of city school. For if the country school was left unsupported by state requirements of a long period of law study, and unsupplemented by subsequent office work, at least the tradition of full pressure work in the school itself was preserved. When it became possible to lengthen its truncated course, this tradition enabled the country school to extend its operations, with whatever defects of emphasis, over the years that had previously belonged to the office. The three-year law school course of to-day has claimed for

[1] See Appendix, page 432.

its own all the ground lost when the supplementary training was abandoned. A student in one of these schools devotes at least as much time to the study of the law — in many cases he devotes far more time — than did his predecessor under the system of successive school and office training.

Quite different is the situation into which the city schools drifted. Theirs was the tradition of much less strenuous work, so far as the school itself was concerned. A large part of the student's daily time was supposed to be devoted, not to the preparation of his lessons, but to familiarizing himself with the practical routine of a law office. In many cases no change in this respect was produced by the change in state requirements. To the extent that the student continued voluntarily to attend the law office, he continued to absorb as much law as before, partly from the school and partly from the office. Gradually, however, as the state relaxed its requirement, the tradition of law office work, as an essential element in the training, also faded away. Students who were not in law offices — students who were supporting themselves in occupations entirely disconnected with the law — tended to take advantage of the convenient hours and to press for admission to these schools. The schools themselves found it convenient to continue their instruction on the old low pressure plan, and to confine their demands to what could be satisfied by the new type of student as readily as by the old. They did not take the step either of restricting admission to law office clerks or of intensifying the work to such a pitch as to require morning preparation from all their students. Insensibly, and we may say innocently, there thus arose "part-time" education in law — not part-time in the sense that the instructors give only a part of their time to the school, nor yet in the sense that students give only a part of their time to the school alone, but in the sense that students give only part of their time to any sort of legal training.[1] Columbian College at Washington, D. C. (George Washington University), was the first to perceive clearly that this tendency could be stimulated, and that an entire new market of prospective law students could be developed by this means. Its school, opened in 1865, was deliberately designed to reach employees in the government departments, released from their

[1] There seems to be no better general term than "part-time" with which to designate schools that hold their sessions either in the evening or in the late afternoon or early morning or lunch hours. The term is unfortunately ambiguous, being often used to-day in the first of the senses noted in the text. The relative merits of part-time and full-time *instructors* will be discussed in a subsequent Bulletin.

labors at three o'clock in the afternoon.[1] Almost at once other schools started up in Washington, and later in other large cities, with evening hours, designed to make the study of law possible for a still wider body of self-supporting students.

The important landmarks in the night law school movement, omitting early instances, schools or classes in which no degrees were conferred, and extinct schools like Hammond's Iowa Law School,[2] were Georgetown University and National University[3] in Washington, D. C., 1870; the present Northwestern College of Law in Portland, Oregon,[4] 1884; the Metropolis Law School of New York City,[5] Chicago College of Law[6] and the University of Minnesota evening law department,[7] all started in 1888; Baltimore University,[8] 1889. The growth in the number of such schools and in their student attendance is not easily stated with complete precision, owing both to deficiencies in the information available for the earlier years[9] and to the number of institutions that offer both full-time and part-time work.[10] The following

[1] Since then, the closing hour of the departments has been postponed to four o'clock, and later to four-thirty, providing much less favorable conditions for this type of law school.

[2] 1865–68. See above, page 191.

[3] See above, page 188.

[4] Organized by a Georgetown graduate. Originally affiliated with the state university.

[5] Subsequently absorbed by New York University.

[6] Originally affiliated with Lake Forest University. A progenitor of the present Chicago Kent Law School. Compare page 185, note 3.

[7] Abandoned 1911.

[8] Subsequently absorbed by the University of Maryland.

[9] Interesting evidence of the long-continued blindness of the public to the necessary implications of after-hour sessions is afforded by the fact that although the U. S. Commissioner of Education, since his first report in 1870, has stated the length of law school courses, it was not until 1894 that he reported the time of day when sessions were held. Even now he distinguishes only between "day" (which would include afternoon) and "evening" (which in the South may be interpreted to mean afternoon) schools, so that the information is not of great value.

[10] As early as 1873, Dwight divided his Columbia students, because of their large number, into two sections, of which the one recited in the afternoon (Juniors 3 to 4.30, Seniors 4.30 to 6), the other in the morning (Seniors 9.30 to 11, Juniors 11 to 1). When, in 1891, Dwight retired, and the school was reorganized with the avowed purpose of discouraging the attendance of office students, seceding members of the faculty ran the New York Law School on a similar plan, until 1894, when, to meet the competition of the Metropolis School, evening sessions also were added. The following year the New York University law school, holding sessions in the afternoon, took over the Metropolis School as its evening department, and later established also morning sessions.

The first school to offer parallel day and evening sessions was the University of Minnesota, in 1888.

tables, however, are believed to be accurate so far as they go. The testimony they afford as to the tremendous development of night law schools since 1890 is strengthened by the fact that under the term "day" are included schools where a complete course of study is scheduled for afternoon hours only — essentially a less accentuated form of part-time education.[1]

NUMBER OF LAW SCHOOLS, CLASSIFIED AS "DAY" AND NIGHT

	1889–90	*1899–1900*	*1909–10*	*1916–17*	*1920–21*
Pure "day" schools	51	77	79	76	80
Mixed "day" and night schools	1	5	13	21	21
Pure night schools	9	20	32	43	41
Total	61	102	124	140	142

STUDENT ATTENDANCE, CLASSIFIED AS "DAY" AND NIGHT

	1889–90	*1915–16*
Pure "day" schools	3,949	11,469
Mixed "day" and night schools	134	5,164
Pure night schools	403	5,570
Total	4,486	22,203

Now, let there be no misunderstanding as to the significance of this development. Broadly considered, with reference to what can ultimately be made out of these part-time schools, the phenomenon is a healthy and a desirable one. Humanitarian and political considerations unite in leading us to approve of efforts to widen the circle of those who are able to study law. The organization of educational machinery especially designed to abolish economic handicaps—intended to place the poor boy, so far as possible, on an equal footing with the rich—constitutes one of America's fundamental ideals. It is particularly important that the opportunity to exercise an essentially governmental function should be open to the mass of our citizens. Undoubtedly, there are many ways of attempting to realize this ideal, and some of these ways are bad ways, that defeat their own end. Inherently, however, the night school movement in legal education is sound. It provides a necessary corrective to the monopolistic tendencies that are likely to appear in every professional class—tendencies that in some professions may be ignored, but that in a profession connected with politics constitute a genuine element of

[1] So in particular the "mixed" schools of 1916–17 include nine that offered instruction only in the late afternoon and evening, and were essentially night law schools that had divided their large classes into two sections. These contained in 1915–16 2084 students. Analysis of detailed figures in the Appendix, pages 448–449, shows that over half the schools, containing over half the total attendance, offered part-time work.

danger. A decidedly intolerant attitude toward any sort of night law school training is sometimes displayed by those who have received their education in other ways. When this attitude does not reflect merely a failure to grasp the necessary implications of a democratic form of government, it is itself an indication of how badly these schools are needed.

Those who feel most strongly, however, the fundamental justification of the night law school movement should not weaken their own cause by ignoring the present deficiencies of these schools. As instruments for training competent servants for the democracy they are far from having realized their latent possibilities. On the contrary, it is not too much to say that up to the present time they have done more harm than good to legal education.

The evil that has been wrought has been of two kinds, the one negative and incidental, the other positive and direct. The incidental effect of letting city schools be overrun by young men who are employed elsewhere than in law offices has been that what may be termed the English type of legal education has expired in this country without being given a fair chance. Only by actual test could it be determined whether the continuous correlation of theoretical instruction in a law school with practical work in a law office is suited to modern conditions in this country or not. In the precise form advocated by Attorney-General Butler eighty-five years ago—correlation with the work of a private law office—it almost certainly is not so suited, because of changes in the law office itself. Boston University in 1872, and the Buffalo Law School in 1887, are examples of schools started during the quarter century after the Civil War with the deliberate intention of reviving the old ideal of maintaining close touch with the law offices as an antidote to the unduly theoretical tendencies of the orthodox schools. The Buffalo school, owing to the complete absence of commercialism in its faculty and to the peculiarly strong professional spirit in the local bar, has come near to realizing the old Butler ideal of legal education as the joint responsibility of the school and the office.[1] It has been the product of local conditions, however, which cannot long continue, if indeed they have not already changed. The Boston school, on the other hand, has come over to the full-time type.[2] A later institution—the law school of the

[1] It was conducted originally by twenty practitioners, all giving their services gratuitously, and presented in western New York much the same contrast to the strongly academic Cornell school, started in this same year, that Boston University presented to Harvard.

[2] In 1913 it had virtually no law clerks among its students.

University of Pittsburgh—which now schedules the bulk of its classroom work for afternoon hours, contains an unusually large proportion of law clerks and can accordingly claim to be a "half and half" rather than a part-time school; but it is significant that even here a change to the orthodox schedule of morning hours has recently been under discussion. In general, the attempt to rely upon the law office as an efficient educational factor has brought only disappointment.[1]

The idea, however, that theoretical instruction shall be correlated with some sort of practical activity pursued outside of the school is absolutely in line with modern theories of educational organization in other fields.[2] Its revival in legal education was an attempt to remedy the weakness, on the side of practical expertness, that is generally conceded to characterize young law school graduates to-day. Had this scheme of educational organization received a fair trial, we might be wiser than we now are. We might not still be groping for some means of remedying this defect. Instead, law offices dropped out of the machinery of legal education as completely in the case of the city as in the case of the country schools. Then both types of schools tried to cover part of the ground formerly left to the offices by giving formal courses in legal procedure as distinguished from substantive law—the "national" law schools less than the others, but all to some extent, and all necessarily in a theoretical way. Eventually, the country model was introduced into the cities, which after this often contained both full-time and part-time schools. Dissimilar as are these two types of schools from this one point of view, they resemble one another in having little or no relation to the law office and in giving little or none of the practical training formerly provided here. While these two types of schools competed against one another, the original characteristic type of city school, whose students devoted all their time to their law studies, though not all their time to the work of the school itself, was unfortunately allowed to perish.

More serious, however, than the extinction of a promising rival type, was the condition in which the new part-time school itself was left. The loss of the law office element in the training of its students was too grad-

[1] "I have seen enough of trying to do both office and law school at the same time to be certain that there is no good in that." Joseph H. Choate, in E. S. Martin's *Life*, II, 193.

[2] Compare, for instance, the combination of factory with school work in the University of Cincinnati School of Engineering. As a result of the system of military training devised for the late war, this idea has recently received a great impetus.

ual to be noticed while the change was under way; and when it was finally recognized, the line of demarcation between a year of full-time work and a year of part-time work was not sharply defined and could not be expressed in precise mathematical terms. Even to-day no one can say definitely how many years of part-time work are the educational equivalent of one year of full-time work, all other conditions remaining the same, nor even whether such an equivalence is theoretically possible, by any increase in the number of years devoted to relatively superficial work. All that one can assert positively is that a part-time year is less than a full-time year, and that if quantitative measurements are to be attempted at all, the essential difference between these two units should never be forgotten. The average student, to whose capacity the standards of a school must adapt themselves, can crowd only just so much work of any sort into a single year. If a portion of his time and energy is diverted to the task of supporting himself, he can accomplish that much less toward mastering the science of the law. An increase in the number of hours of classroom instruction which the part-time student undergoes during the year may enable him to cover a wider field in an even more superficial manner than before, but it does not alter the essential inequality between his "year" and the year of the average student in a full-time law school. The two units of measurement are radically different, and should never be thought of as being the same. Far better to ignore quantitative standards altogether, and pay attention only to the character of the student body and the competence of the faculty, than to compare measurements made with different scales.

The yardstick is too much used in education at best, because of the charm that definite figures have for the average mind. Spiritual imponderables, though more important, are also more difficult to estimate, and tend to be overlooked in the search for fallacious precision. Yet decry this abuse of quantitative measurements though we may, we cannot avoid employing them to some extent. A degree course can hardly be understood unless the time required for its completion is measured in some rough and ready way. A sufficiently accurate measurement seemed, at first, to be provided by a bald statement of the number of years required to receive a degree. The public thought in these terms, rather than in terms of the amount of law work that a student could reasonably be expected to accomplish under the conditions obtaining in the school. Part-time schools offering instruction during evening or afternoon hours, outwardly the equal of full-time schools having courses of

equal length, were really much more superficial in their work, without anybody — not even themselves — fully realizing their inferiority. Thus they reached the deplorable position that they occupy to-day — that of being merely cheapened copies of the regular full-time model. A recent movement to increase the length of the evening course beyond that of the standard day course[1] is to be commended as a step toward making possible the betterment of these schools, but should not be allowed to obscure their inherent limitations.

[1] The University of Minnesota, originally maintaining parallel day and evening courses of two years, increased the length of its evening course to three years in 1892. The first night school to establish a three-year course, when the prevailing day standard was two years, seems to have been the Chicago College of Law (Chicago Kent) in 1888. The first to establish a four-year course was the Temple University law school of Philadelphia, in 1895.

In 1920–21, out of a total of 62 schools offering evening instruction, either alone or in connection with day courses, 9 offered a two-year course, 27 a three-year course, 25 a four-year course, and the College of Law of the University of Southern California offered a course covering four academic years and three intermediate summers — equivalent to five academic years.

Since 1912 the period of study required by the Massachusetts bar admission rules has been four years in place of three, for study pursued in an evening law school, or by applicants who have devoted a substantial part of their time to other occupations.

CHAPTER XXXIII

GENERAL RELATION OF THE LAW SCHOOL TO THE PROFESSION AND THE STATE

WE are now in a position to see the American law school in its proper perspective, against the background of political and educational controversy out of which it emerged, and by which its development is still conditioned. The policy adopted by the several states toward legal education in general, and toward this new type of legal education in particular, has been the result of conflicting forces differently emphasized in different states at different times, but appearing and prevailing everywhere in the same general sequence.

1. *Unsuccessful Efforts to differentiate the Profession without Reference to Law Schools*

To begin with, educational considerations have always urged a long and rigorous course of preparatory training before a neophyte should be permitted to enjoy the privileges and assume the responsibilities of a professional bar. Political considerations have always urged that the creation and the administration of law, in so far as it affects the well-being of the average citizen, cannot be safely entrusted to a separate class, but must be kept within the reach of the great bulk of the population. Prior to the rise of law schools, the obvious solution was to distinguish between two types of lawyers. The precise English distinction between barristers and attorneys or solicitors, although attempted in several states, was not suited to the simple organization of American society. It lacked the support that has enabled it to survive in the old country—the Inns of Court, a central highly privileged institution, hallowed by tradition, that existed for the special purpose of training barristers. Independently of this line of division, however, English attorneys were originally distinguished among themselves according to the courts in which they were privileged to appear. At a time when advocacy (trial work) was a relatively more important feature of private law practice than it is to-day, there was also the further distinction that in the lower courts the privilege of audience was enjoyed by both attorneys and barristers, while in the upper courts of Westminster it was open to barristers only. It seemed logical, ac-

cordingly, to introduce into this country a corresponding distinction between the bar or bars of the lower courts and that of the upper court. From the upper bar it was hoped that the judges themselves would be chosen, as in England. Jefferson, quite as strongly as any New England Federalist, cherished this ideal. In an interesting letter addressed to George Wythe, in 1779, relative to their new rules of admission for Virginia, he wrote:

> "I think the bar of the General Court a proper and an excellent nursery for future judges if it be so regulated as that science may be encouraged and may live there. But this can never be if an inundation of insects is permitted to come from the county courts and consume the harvest."[1]

He attempted to preserve this division, however, merely by continuing a colonial prohibition against practicing both in lower and in upper courts. This was promptly repealed; and his uniform and super-symmetrical system of admitting applicants to the bar on the sole basis of their ability to pass an examination proved entirely inadequate to improve even the breed of insects. The Jacksonian democracy found its spokesmen in lawyers trained under this system in the South and West, but the professional bar was sacrificed in the process.

In the northern states, on the other hand, the theory of a profession divided along court lines was given a thorough trial, and failed. The elaborate gradations of the bar, each with its corresponding period of training piled one on the other up to dizzy heights, were recognized as a monopolistic device. Especially in view of our elaborate system of appeals, the privilege of practicing in a lower court is worth little to one who cannot take his case higher. The principle on which the division was made was unsound, even if those in charge of the system had been animated by broader views. As a matter of fact, the natural tendencies of professional control asserted themselves. Too much attention was paid to guarding the sacred portals of the bar. Too little assistance was rendered to forces that sought to liberalize our political and juristic structure. In sharp contrast with the inefficient idealism that characterized the more democratic states, the northeastern states developed a bar which though divided in theory was unified in fact, a bar permeated with noble professional traditions, the loss of which we

[1] *Writings of Thomas Jefferson*, ed. P. L. Ford, 1893, II, 166. The contemptuous reference to lower-court practitioners, from a man of Jefferson's broad sympathies, is eloquent testimony to the condition of the lower bar in Colonial Virginia.

still regret. But the price that these communities had to pay was something approaching political stagnation.

The contrast was only for a time, however. The political argument triumphed over educational considerations even when these latter were backed by a socially and politically influential professional class. The professional bar was destroyed with all the good and all the bad in it—its insistence upon thorough training and its selfish exclusiveness, its high ethical standards and its narrow political vision. Only in states where it had abused its privileges least did some semblance of it remain, protected by requirements of definite but brief periods of training. Broadly speaking, everywhere, both north and south, the legal profession was replaced by the individual lawyer, serving in private practice his clients, in public life his constituents. A nominal bar examination—supplemented in some states by a still more nominal second examination before admission to the highest court—was a mere historical relic inherited from the time when there had been a genuine bar. Formerly either the profession itself or the state had undertaken to ensure that those who enjoyed a lawyer's privileges were trained to discharge his responsibilities. Under the new dispensation the easily gained privilege meant little, and the surviving fiction of professional or public responsibility meant less. The chief practical effect of perpetuating the tradition of formal "admission to the bar," instead of frankly declaring that anybody might practice law, was to replace one unrealized ideal by another. The unsuccessful effort to construct a bar that should be divided and differentiated according to the functions it performs was to be followed by a later and still less successful effort to build up a unitary profession. We came to assume without discussion that there is or can be a standardized lawyer, so to speak—an object to be treated with scrupulous uniformity by the state, whatever be the precise form of treatment.

All this was not so wholly regrettable as it may at first appear. It should never be forgotten that the England from which we inherited our institutions was in no sense a democracy. It would have been surprising if an institution so closely connected with political rights as is the legal profession could have survived our political transformation without being itself profoundly modified. It is a pity, on some accounts, that the old bar should have let itself become identified in the public mind chiefly with the idea of privilege, and so have put itself in the way of being destroyed more completely than it need have been. Yet

this destruction was by no means an unmixed evil. The old tradition of a professional "bar"—a literal barrier intervening between the professional order of lawyers and the public outside—had to be weakened, before it could be replaced by the modern ideal of public servants proceeding from and responsible to the people at large. And it was necessary to rid ourselves of an antiquated and unworkable distinction between lower-court and upper-court lawyers—it was necessary, perhaps, even to forget that lawyers can be distinguished from one another at all—in order to pave the way for more intelligently conceived lines of division, based not on paper rules but on popularly respected institutions.

2. *Unsuccessful Efforts to maintain a Unitary Bar in Face of the Actual Divisions produced by Different Types of Law Schools*

Such an institution existed in the American college. Even when the only part played by the college in training lawyers had been to offer to those who could afford it the privilege of a classical education, this had resulted in dividing the profession into two groups. Those who had enjoyed the educational and social benefits of a college course tended to carry off the higher rewards both of private practice and of public life. This division was none the less a real one for not being explicitly recognized in the formal organization of the bar, or for not being absolutely hard and fast in its practical operation. When the colleges took the further step of lending their financial or moral support to law schools proper, the germ of another possible distinction appeared—a distinction, namely, between lawyers who had received their technical training under a practitioner and those who had been educated in a systematically organized institution. Since, however, these institutions were themselves conducted by practitioners, this distinction did not at first amount to much, and to the extent that it was later recognized it was regarded as a distinction of quality rather than of type, with the advantage all in favor of the law schools. The middle states, it is true, preferred their traditional system for a time, and even Harvard professed at first to give only part of a lawyer's training in its school. As an incident, however, to the general degradation of the bar, the value of office training everywhere diminished. The school was seen to be doing the work formerly done by the law office, and doing it more efficiently than the law office could. Finally, the schools were organized centres, capable of exercising a political leverage through their grad-

uates and through the friends of the university at large, while the practitioners were disorganized and weak. Hence the ease with which changes in bar admission rules were secured from the legislature or the courts —changes which either put the schools on an equality with other methods of training, or even gave them a positive advantage. The theoretically indefensible exemption of law school graduates from the regular state bar examinations thus became rooted in many states. Schools with an established reputation, like Harvard and Virginia, prospered by relying only on themselves, but weaker institutions, especially those with only a local appeal, were strongly tempted to seek state assistance.

Now, so long as no educational standards existed other than those that the schools themselves imposed, it was natural and proper that they should be given all they asked for. Primitive though they seem to us to-day, they were the torchbearers of legal education throughout the land. The immediate result of the democratic onslaught had been to deprive the greater number of practitioners and judges of all sense of professional responsibility. The bar, it cannot be too often emphasized, had ceased to exist except in a purely fictitious sense. In the absence of external sanctions each lawyer and each judge became the arbiter of his own conduct, and was checked only by such negative restrictions of decency as his individual conscience bade him maintain. The notion that he ought to step outside the narrow path of fidelity to his client or to his official task, for the purpose of rendering service to his profession or to the state, was entirely foreign to prevailing habits of thought. I need only allude briefly to the actual corruption that ensued, especially in the years immediately following the Civil War, and to the various steps that were taken to remedy it. The point here emphasized is that this corruption was properly ascribed, in part, to the absence of a genuine legal profession. The establishment of selective bar associations meant that it was then for the first time recognized that among the responsibilities which the democratized body of lawyers had proved incapable of discharging was responsibility for the education of its recruits. Care for this devolves at least as appropriately upon the existing members of a profession, when such an institution exists, as it does upon a university that is concerned with all branches of human knowledge. It is only through coöperation between a school which intelligently devises the means, and a profession which properly defines the ends, that sound professional training can be established. Prior to the Civil War, legal education was at a low

ebb because, of these two necessary institutions, only the law school existed. Bearing thus the entire burden, it did the best it could. It received, and it deserved, every encouragement.

When, however, there arose a new profession, organized in selective bar associations, then the matter wore an entirely different aspect. This new profession was properly critical of the schools on general grounds, holding that they were superficial and perfunctory, that they did not thoroughly teach their students law. The profession accordingly initiated steps designed to make the schools, and the entire system of preparation for the bar, better. In order to accomplish this, however, it was necessary for the active practitioners not merely to regain control of the field of legal education, by abolishing the diploma privilege possessed by many schools and substituting stringent bar examinations conducted by themselves. If a new and improved system of bar preparation was to be instituted under professional control, it was necessary for them to answer also such specific questions as these: Should credit be given for law school work in a school situated outside of the state? Should supplementary work in an office be required? What should be the character of the questions set in examination? Should applicants be appraised on the basis of the information, or of the reasoning powers, disclosed in their answers to these questions? It was necessary, in short, to face the whole problem of what kind of law and of lawyers was to be tested by the state examinations. Prevailingly the preference of the profession has been for the local law, with emphasis upon information and practical expertness rather than upon reasoning power; and many schools have accepted this ideal as their own. Other schools, however, during the period when they were free from outside interference, had developed independent views as to the type of training they proposed to provide. Not docile followers but would-be leaders of the profession, they have fought, through their faculties and graduates, in defense of their ideals, first in the legislatures and gradually also in the bar associations and in the courts. They have been opposed by older members of the bar, and by judges naturally chosen from among these — men educated in a different way and tending to regard the problem from a different angle. The result has been a continuing controversy between certain leading law schools, on the one side, and the bulk of the profession with its satellite schools, on the other, over the proper method of devising and administering rules of bar admission.

This controversy has sometimes flared up violently, sometimes subsided into an armed truce. Its present status is that the leading schools have won their main point of being allowed to develop freely without professional interference. When they have lost or voluntarily relinquished the privilege of having all their graduates exempted from the regular bar examinations, they have succeeded in having these examinations conducted in such a manner as not to discriminate against those of their graduates who from their own point of view are the best prepared. The prestige of these institutions is now so great that courts and bar examining authorities dare not defy them by actually penalizing their type of training. This main point has been won, however, at the cost of converting the bar examination into something that is of little positive benefit to any type of school. Professional opinion is still far from being convinced that the type of training provided by these leading schools is the only type of legal education of which the community stands in need. The state authorities are equally unwilling to discriminate against the best prepared graduates of other schools, which also can put pressure upon them, and incidentally represent a kind of legal education with which they are more familiar. The solution they have adopted is to institute a generalized test, supposed to be equally suited to all, but in reality of a sort that is quite ineffective to weed out either the more poorly prepared applicants from good law schools of any type, or applicants who are unfit to practice because they have been prepared in bad law schools. They do this the more readily because, outwardly, there is no great difference between the curricula of the several types of law schools, this being almost the only respect in which all schools have followed their leaders. Basing superficial tests upon this standardized curriculum, accordingly, ignoring the vital differences which actually exist among the schools, and operating under the fetish of a uniform examination leading into a unitary bar, the present system of professional control serves only to encourage some sort of law school education, in some amount, as against pure office training. Except for a more general insistence upon three years of law study, and upon some general education, the relation between the schools and the state examining authorities is virtually the same to-day as it was prior to the Civil War, when there really was no great difference between the schools, and the encouragement of law school training in general was all that was needed.

Meanwhile, with the rapid multiplication of law schools, this once

vaguely apprehended division of the profession into the two groups of school-trained and office-trained men is rapidly ceasing to have any substantial importance. In states with a large urban population, suited to the development of law schools, there will soon be hardly enough pure office-trained men among the younger members of the bar to count.[1] The distinction, on the other hand, between the different types of law schools which prepare for admission to practice has now become one which, if our admission systems are to have any relation to reality, can no longer be ignored. It is a distinction that has overtaken and absorbed, as one of its details, the continuous practical recognition of the difference between lawyers who have been through college and those who have not. It is the basis of the genuine differentiation among lawyers which, in defiance of legal theory, now exists, and makes of American legal practitioners, not a united bar but a heterogeneous body.

3. *Development of Important Variations among Law Schools*

As regards the subjects studied in the law school itself (the specific courses offered in Contracts, Torts, etc., as distinguished from the entire course of preparation, including preliminary general education and subsequent practical office work), such variations as now exist between the schools are relatively unimportant. Some schools have attempted, more or less successfully, to broaden their curriculum by the inclusion of "borderland" subjects such as international law and jurisprudence, by cultivating statutory and administrative law, or by instituting genuine practical work in connection with Legal Aid societies. There is some variation also as to the maintenance of the traditional moot court work, or practice in drafting written instruments or in "finding the law." Under present conditions, however, no law school can, in its regular professional course, devote great attention to such matters. The path indicated by Harvard, rather than by the early Virginia institutions, has been followed by all the schools. Their main activities are devoted to instruction in the relatively narrow, though exceedingly important and difficult, field of the judge-made technical law. Within this domain there is again much variation in the richness of the curriculum offered. Some schools, through addition of new technical courses or subdivision of old ones, or through increase in the number of hours

[1] In 1921 the New York State Board of Law Examiners stated that 95 per cent of their applicants had law school attendance to their credit.

devoted to a standard topic, offer a much richer curriculum than do others. These variations are involved with the devices of an elective system, or of the giving of part of the instruction only in alternate years in order to make the enrichment possible, and have their origin rather in the financial resources at the command of the institution than in a conflict of educational ideals. All such distinctions will be here ignored in order to bring into greater prominence more fundamental lines of division.

Similarly, the movement to increase the length of the law school course, and to require at least a high school education for entrance into the school, has been a general one that has affected all law schools alike. The few schools which, because of inadequate bar admission provisions, still fall below the now generally accepted minimum standard of four years in a high school, followed by three years in the law school, are mere anachronisms. The one substantial service rendered by the bar associations, in their undiscriminating attitude toward schools of every type, has been to bring about this situation.

The important lines of division, the gradual development of which has been traced in the preceding pages, have been four. They originated in departures from the traditional practitioners' conception of legal education, which may be thus defined: The local law of the jurisdiction (including its practical application) was to be taught (in so far as theoretical teaching is profitable), by means of textbooks, to students who devoted their entire time to the law, and who might or might not be college graduates.

The first innovation, made by Harvard from the beginning, was to substitute in this formula national for local or severely practical law. Prior to the Civil War, this was the only departure from the accepted formula and was not maintained even by Harvard with complete consistency. Some attention was paid here to local law. At the same time Harvard textbooks were used in other schools. Neither this distinction, accordingly, nor the further differences, now virtually obliterated, between country law schools which commanded the entire time of their students and city schools which shared this time with law offices, were of sufficient importance to impair the generalization that all law schools during this period were very much alike. The proclaiming of the national ideal was none the less a highly significant fact, particularly when considered in the light of later developments.

The next two important innovations were the adoption by certain

schools of the case method of instruction as a substitute for text-books, and the establishment of late-afternoon and evening law schools avowedly intended for students engaged in other occupations. These two developments originated, as we have seen, immediately after the Civil War, almost simultaneously, the one at Harvard and the other in Washington, D.C.; and a further parallel appears in the fact that neither found much favor elsewhere until, about 1890, events occurred in New York City which brought them into vogue. Prominent local practitioners and the authorities of Columbia University endorsed the case method at just about the same time that the successful Metropolis night law school, soon absorbed by New York University, was started.

In spite of the fact that the case method was also attempted in this latter institution, these two movements were inherently antithetic. If political and humanitarian considerations justify the organization of law schools in the particular interest of young men who are able to devote only part of their time to their studies, these same considerations make it illegitimate for such schools to employ an instructional method whose successful operation demands from its students abundant outside preparation. A certain correspondence also can be traced between this line of division among law schools and that which is determined by their relative preference for national or for local law. There is no inherent reason why the case method should not be applied to the teaching of local law. It originated, however, in a national law school, and the same type of scholarly mind that is interested in critically tracing the law to its sources is apt to appreciate the importance of replacing local variations by a legal system that is uniform for all the states. The case method and the national ideals naturally supplement and fortify each other. Similarly, in part-time schools the students are especially desirous that their instruction shall be serviceable for immediate practical use. The law of the jurisdiction as it already is, including procedural details, receives therefore greater emphasis in these institutions.

Finally, after 1890, came the fourth and last important development when, again under Harvard's lead, a considerable number of law schools elected to receive only students who possessed a certain amount of preliminary college training. The wide variations in the amount of this training insisted upon for admission to regular standing, as well as the exceptions frequently allowed in favor of special students, or of candidates for a special degree, have sprung in part from fear of losing students to other institutions in case too much was required. In part

also they have sprung from a failure to agree as to the purpose which college training serves, or, after the colleges themselves have been improved, can be made to serve, in the education of American lawyers. Some schools see in the colleges merely a carrier for certain important elements in a complete legal curriculum, such as history, government and economics, which, because of the present condition of our technical law, are necessarily excluded from the law school itself. If this is all that is demanded, one, or at most two, college years will suffice. Other schools, on the other hand, believe that the function of college training is to do all this, and at the same time something more; not merely to supply the omitted elements of a complete legal curriculum, but also to provide a liberal education in fields of study which have little or no connection with the lawyer's chosen work, and which for this very reason he ought to cultivate for the purpose of developing into a better citizen and a happier individual. To those who cherish this broader conception of the purpose of college training, three college years seem none too long a period in which to accomplish the results desired—although perhaps long enough, taking into consideration the length of the subsequent technical course. The question at issue is essentially whether one subscribes to German or to English ideals in higher education. The German university ideal of teaching a lawyer only law, interpreted in its broadest sense, is the more economical of time, and when the college years have been properly adjusted to the end in view, will give us better lawyers than we now have. The English ideal of encouraging the student to become something more than a very good lawyer is more in harmony with the traditions that hitherto have predominantly moulded our civilization.

For practical purposes, because of the bearing of the requirement upon the law student's participation in undergraduate social and athletic activities, the distinction between two years and one year of college preparation is greater than that between three years and two years, or between one year and none. As a step toward a tentative division of the schools into broad groups it will be convenient, therefore, to denominate all schools that require as much as two years college for admission as "high-entrance" schools, and to treat further distinctions in this respect as variations which, though of considerable importance, may be disregarded from this point of view; just as, among part-time schools, no account need be taken of the subordinate distinction between schools which hold their classroom sessions in the late afternoon hours and pure evening schools, accessible to a still greater number of

students. High-entrance schools, thus defined, are nearly always schools that offer full-time and only full-time work; since the recent abandonment of evening instruction by the Universities of Minnesota and Washington, there are only three exceptions.[1] Because of the more mature student body thus secured, schools with high entrance requirements are also better qualified, than are other full-time schools, to employ the case method.

4. *Four Broadly Distinguished Types of Law Schools*

It is clear that this constant tendency to diversification, naturally occurring among institutions that have freely developed without professional or governmental control, has made of present-day American law schools, in some ways, a motley lot. If every independent variation, however minute, were to be taken into account, hardly any two schools could be classified together. If, however, only the more important variations discussed in the preceding section are considered, it will be found that their joint effect has been to produce four fairly distinguishable groups, the lines between which are less blurred than might have been expected, in view of the absence of a definite programme and reasoned justification for the policies adopted by most of the institutions. In proportion as particular schools realize more clearly just where their mission lies, and consciously adapt their organization and methods to the end in view, some anomalies will disappear. Already, however, the main lines along which future developments will proceed are clearly discernible.

These four groups comprise respectively about ten per cent, twenty per cent, thirty per cent and forty per cent of the existing one hundred and forty-two law schools.[2] The smallest group consists of schools whose course of instruction, leading to their first degree, can be completed in less than three years whether of full-time or of part-time

[1] The University of Pittsburgh law school, which will require a college degree for admission beginning 1921, still offers the bulk of its classroom work in the afternoon. The circumstance that a great majority of the students are in law offices, however (see above, page 400), as also the scheduling of instruction during the early afternoon, distinguishes this from the modern type of "part-time" institution. Two Roman Catholic evening law schools, located on the Pacific slope, require two college years.

[2] The precise figures, in 1920-21, were 11 per cent (16 schools); 21 per cent (30 schools); 29 per cent (41 schools); 39 per cent (55 schools). For additional statistical information in regard to law schools, tentatively grouped on the basis of the minimum amount of time that students must devote to their education, see Appendix, pages 441, 448-449.

work. This is the one contemporary type of law school which is clearly destined to disappear. The responsibility for the survival to the present day of schools that profess, in so brief a period, to cover the field of technical law rests less with the authorities of the institutions themselves than with the condition of the bar admission rules, or provisions affecting the granting of degrees, in the ten jurisdictions (eight southern states, Indiana and the District of Columbia) in which they are found.

Next in size comes the highly important group of high-entrance, full-time schools. These are all departments of a genuine college or university. With few exceptions they have acknowledged the leadership of Harvard, and teach national law by the case method.

The next group, which may be defined as low-entrance schools offering full-time courses of standard length, is at present a somewhat miscellaneous one. Nearly half of these schools require a single college year for admission, and a few offer part-time in addition to full-time work. Since 1910 this group has decreased in size, both relatively and actually, and would have decreased still further had it not been recruited by former short-course schools. It is not likely, however, that all schools of this type will eventually pass either into the high-entrance or into the purely part-time group. There will probably continue to be a demand for law schools which emphasize the local law, as do part-time schools, and employ methods similar to theirs, but can cover the ground in a shorter time. In other words, in addition to that class in the community which is able to take the long course of training demanded by the leading law schools, and that class which can study law only while earning its livelihood, there is also an intermediate class, which is not able to go to college, but is able to devote its entire time to studying law. There is no good reason for delaying the education of such students by requiring them to take the protracted course of study that is, or should be, given by night law schools.

Finally, the largest group of all is the group of part-time schools. These usually schedule their classroom exercises for evening hours, but several hold parallel sessions during the late afternoon, and a few operate during the afternoon only. Law schools that are not connected with a genuine college, or whose connection with a college is purely nominal, are almost always of this type. This group, as a whole, is not in good repute among those who cherish the highest educational and professional ideals, but it is precisely this attitude on the part of lead-

ing scholars and lawyers that, more than any other single factor, has made these schools what they are. In the judgment of the writer, it is neither possible, nor, having due regard to the fundamental principles for which the American commonwealth has been supposed to stand, would it be desirable, to abolish this now definitely established and rapidly growing educational type. Efforts had much better be directed toward transforming it into something far better than it now is.

Much will have to be done before this can be accomplished, but one particular reform may be specially mentioned both because its adoption presents no great practical difficulties and because the argument in its favor may serve to bridge the misunderstanding that now exists between the advocates and the opponents of part-time instruction. The movement already under way to lengthen the course of these schools should be encouraged, and carried even beyond the four-year figure which is now its goal. The practicability of this reform is enhanced by the fact that, given bar admission rules which protect the schools, it is to their direct financial interest to retain their students as long as they can. Its justification on educational grounds is that, even apart from the resulting increase in the aggregate amount of time devoted by the student to his studies, a better distribution of his time can be made than now commonly occurs; fewer recitations a week, with intervening evenings left free for preparation, would yield better results than now come from frequent recitations based on very hasty and inadequate preparation. Finally, this extension of the night school course is consistent with the principle, based on political and humanitarian considerations, of not permanently debarring young men of average ability from access into our governing class, simply because they possess modest means. To go farther, and assert that it is not legitimate to delay their admission to the bar beyond the age when more fortunate students have completed their preparation, would be to attempt to reduce the inherent handicap of poverty further than can be justified, if any account at all is to be taken of educational considerations.

5. *Conclusion*

Disregarding, therefore, the few surviving short-course institutions, three different types of law schools seem likely to survive. One type is rooted in our colleges and universities, and, teaching national law by the case method, is destined to produce a minority of our actual legal

practitioners, but textbooks for all. The other two types, while differing somewhat from one another in their organization and student constituency, are alike in the more fundamental respects that they are not rooted in the colleges, and that they utilize the labors of the first group for the purpose of training, less thoroughly but with greater emphasis upon the actual local law, the great majority of our future lawyers and politicians. How much remains to be done before any of these types will discharge to the full its special responsibilities has been indicated at many points in the preceding pages, and particular attention has been called to the assistance that selective bar associations might render to schools of the first type by identifying their own membership with the graduates of these institutions. More important, however, than discussion of the precise steps that must be taken in order to make effective our present differentiation of legal practitioners according to the character of their education, is recognition of the fact that this differentiation already and inevitably exists, and that it must form the basis for all efforts toward improvement.

The disposition of the generation that came into power about 1890 has been to accept too easily the ancient formulas without questioning their applicability to present conditions. The most clearly indefensible of these formulas has been the assumption that all lawyers do, and ought to, constitute a single homogeneous body—in common parlance, a "bar." The development of differing types of legal education has established in legal practice groups of lawyers of different types, each of which has been properly interested in perpetuating its kind. Under the influences of an inherited prepossession, however, each has thought it necessary, not only to do this, but also to impose upon the totality of practitioners its own special conception of legal education. Each has thus come into conflict with the other when their views did not happen to coincide. Each has seen clearly that if all American lawyers were educated in accordance with the other's plans, we should be in a bad way. Each, therefore, has tried, when most intolerant, to defeat the others' plans outright. Each has tried, when most conciliatory, to concoct some device whereby the training of the unitary bar should include the best features of all suggested systems. If one-tenth of the thought that has been given to this vain effort had been expended upon the problem of dividing the bar along lines that can be justified on both political and educational grounds, by this time we might or might not have attained a solution entirely satisfactory from both points of view. These types

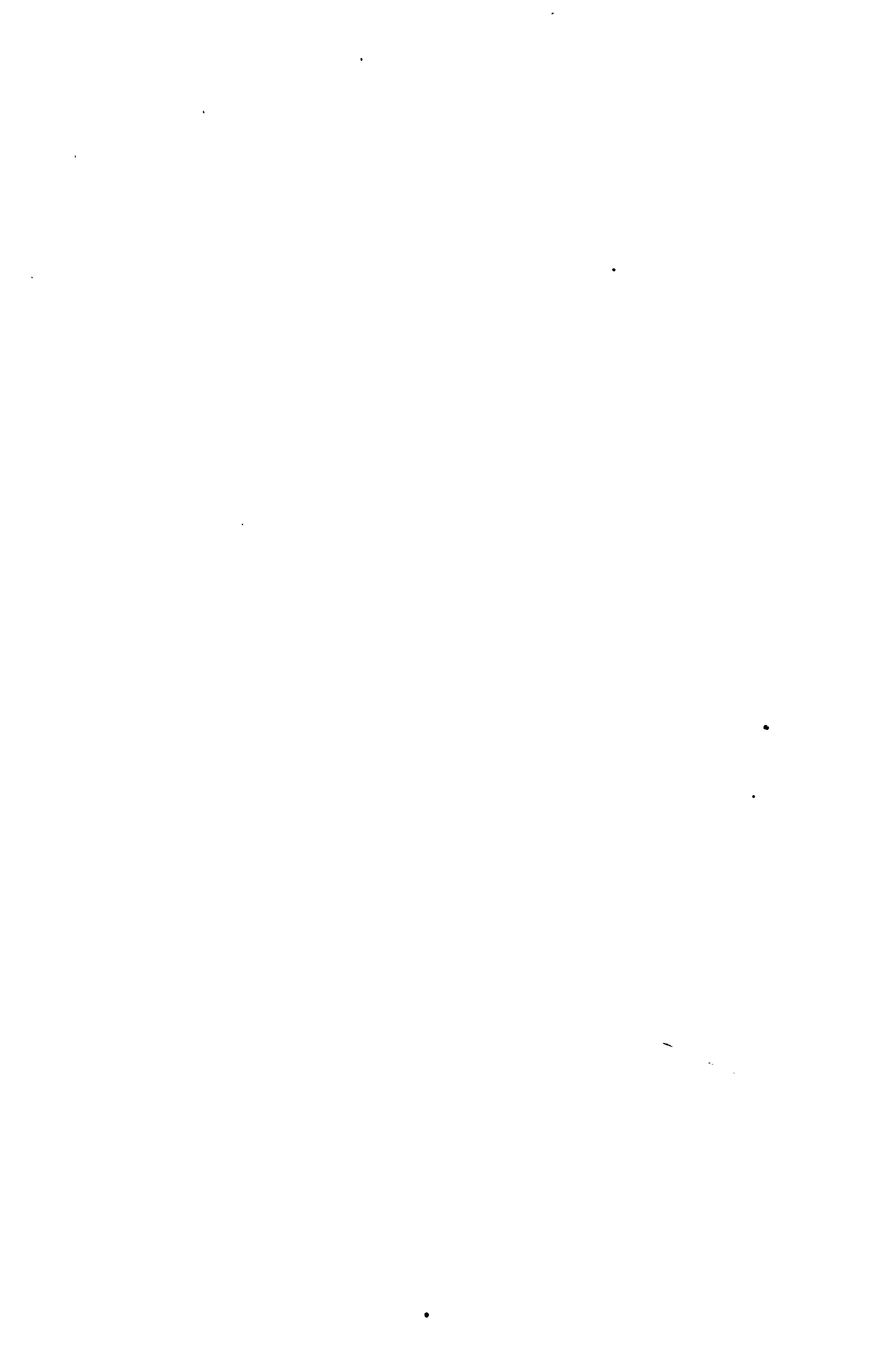
might or might not have succeeded in apportioning among themselves all the manifold activities that are embraced in the expression "government and law." But we should hardly have been in so bad a situation as we are now, when the schools are found, not coöperating, but wrangling for possession of a field too large for any of them to cover in its entirety. The scholarly law school dean properly seeks to build up a "nursery for judges" that will make American law what American law ought to be. The practitioner bar examiner, with his satellite schools, properly seeks to prepare students for the immediate practice of the law as it is. The night school authorities, finally, see most clearly that the interests not only of the individual but of the community demand that participation in the making and administration of the law shall be kept accessible to Lincoln's plain people. All these are worthy ideals. Taken together, they roughly embrace the service that the public expects from its law schools as a whole. But no single institution, pursuing its special aim, can attain both the others as well. Attempts by each type of law school to carry the entire burden of legal education produce such unsuccessful results as to bring the entire body of practitioners into disrepute. The representatives of the several types must begin to face the problem of legal education in a broader spirit than some of them have recently displayed, if judges, lawyers and politicians are to regain that place in popular esteem which is essential to a law-abiding community.

Once it is recognized that a unitary bar not only cannot be made to work satisfactorily, but cannot even be made to exist, then the development of our present differentiated system into one that shall produce better results will be a slow process. It can be begun at once, but it may not be completed by those now living. The amount of time that students can reasonably be expected to devote to their education, both preliminary and professional, determines the curriculum and methods of each type of school; and these in turn determine the character of the subsequent bar admission tests. It is impossible to reverse the process and provide adequate professional tests to which all schools shall conform. Only in so far as bar examinations are adjusted to the training that is practicable for the particular type will they be of service in ensuring high standards of proficiency among those admitted to the bar. Only in this way can completely incompetent individuals be prevented from securing the privilege of practicing law. Only in this way can each school be aided to develop its own training up to the limits of its possible development.

Just what these limits will be can be discovered only through actual experiments conducted under favorable conditions. The answer to this question cannot be forecast, before the problem has even been approached in this spirit. Since even the greatest amount of time that students can devote to their education is too small, the independent development of each type of law school will naturally result in a considerable variation in the kind of professional work for which its products are especially fitted. The task of preparing students to engage in the general practice of the law has now become a very difficult one. The more scholarly institutions may in time be glad to lighten their own burden by throwing upon schools of other types responsibility for certain portions of this broad field. Conveyancing, probate practice, criminal law and trial work are examples of topics that seem particularly appropriate for the relatively superficial schools. All this is mere guesswork, however. It is not even certain that a rigorous functional division of the bar will ever develop. The dividing line between the different types of lawyers may be determined by the economic status of the client rather than by the nature of the professional service rendered. The general principle of a differentiated profession is something that we already have, and could not abolish if we would. The particular principle of a functionally divided bar is something that we may or may not be able eventually to introduce, as one means for making the general principle work better. All that can positively be asserted with regard to this latter possibility is that if a specialization of lawyers according to their functions does come, it will rest in the immediate future upon social and professional sanctions rather than upon provisions of law. Concerted action by bar associations to make these sanctions as powerful as possible will produce more beneficial results, a generation from now, than immediate attempts to secure, from legislatures and courts, an ideally perfect system of bar admissions. The legalistic tradition of a general practitioner of law has been too long established in this country to be lightly overturned, peculiarly inappropriate though this tradition is to a community that combines an exceedingly complex system of law with determined faith in popular self-government. Even under the handicap of this tradition, however, something can be done at once to tone up statutes and rules of court, both for the purpose of assisting conscientious law teachers in the better schools of each type, and for the purpose of introducing into the training of lawyers valuable elements that the schools themselves cannot provide. And

if there is truth in the theory that law is but the laggard expression of community ideals, then assuredly in time that portion of our law which controls the making of lawyers, and thus affects our system of government at its very core, will be brought into harmony with popular needs and aspirations.

APPENDIX



APPENDIX

§ I. LISTS OF LAW SCHOOLS

A. CHRONOLOGICAL LIST OF INSTITUTIONS OFFERING RESIDENTIAL INSTRUCTION IN PROFESSIONAL LAW, OMITTING PRIVATE LAW SCHOOLS NOT CONFERRING DEGREES

IN the case of many schools connected with a college or university the connection is so slight that it would be misleading to draw a hard and fast line between such institutions and those that are avowedly independent. Moreover, the organic status of a law school is apt to vary at different periods in its history. This list accordingly purports to include, in addition to all college or university law schools, all independent institutions that claim, by conferring law degrees, to be doing substantially university work.

The dates are those of actual operation, ignoring a few instances of temporary suspension of activities during the War with Germany. When the school or department is a continuation of a private institution not conferring degrees, the dates of operation under these earlier conditions are given, when ascertainable, in parentheses. Names of defunct institutions, names of live institutions that do not now maintain residential law departments, and names not now in use, are in *italics*.

William and Mary College, Williamsburg, Virginia. 1779–1861; 1920–

University of Pennsylvania (*College of Philadelphia*), Philadelphia, Pennsylvania. 1790–92; 1817–18; 1850–

Columbia University, New York City, New York. 1794–98; 1824–26; 1858–

Transylvania University (*Kentucky University*), Lexington, Kentucky. 1799–1861; 1865–79; 1892–95; 1905–12.

Harvard University, Cambridge, Massachusetts. 1817–

University of Maryland, Baltimore, Maryland. 1823–32; 1870–

Yale University, New Haven, Connecticut. (*Staples-Hitchcock school;* affiliated) 1824–

University of Virginia, Charlottesville, Virginia. February, 1826–

George Washington University (*Columbian College*), Washington, District of Columbia. 1826–27; 1865–

Dickinson College, Carlisle, Pennsylvania. 1834–50; 1862–82; 1890–

University of Cincinnati, Cincinnati, Ohio. (Cincinnati Law School, 1833; affiliated with *Cincinnati College,* 1835; separate school started by the University, 1896; the two merged, 1897; connection with the University broken, 1910; reëstablished 1918) 1835–41; 1842–

New York University, New York City, New York. 1838–39; 1858–

Lafayette College, Easton, Pennsylvania. 1841–52; 1875–84.

Indiana University, Bloomington, Indiana. 1842–77; 1889–

St. Louis University, St. Louis, Missouri. 1842–47; 1908–

University of Georgia, Athens, Georgia. (*Lumpkin Law School,* 1843; affiliated) 1843–61; 1865–

University of North Carolina, Chapel Hill, North Carolina. (*Battle School,* 1843; affiliated) 1845–68; 1877–

University of Alabama, Tuscaloosa, Alabama. 1845–46; 1873–

University of Louisville, Louisville, Kentucky. 1846–

Princeton University (*College of New Jersey*), Princeton, New Jersey. 1846–52.

Tulane University (*University of Louisiana*), New Orleans, Louisiana. 1847–62; 1865–

Cumberland University, Lebanon, Tennessee. 1847–61; 1866–

Albany Law School (*University of Albany,* Union University), Albany, New York. (1851; affiliated with Union College, 1873) 1851–

University of Nashville, Nashville, Tennessee. 1854–55; 1870–72.

University of Mississippi, Oxford, Mississippi. 1854–61; 1867–70; 1871–74; 1877–

De Pauw University (*Indiana Asbury University*), Greencastle, Indiana. 1854–62; 1884–94.

Hamilton College (*Maynard Law School*), Clinton, New York. 1855–87.

Baylor University, Independence, Texas. 1857–59; 1865–72; Waco, Texas, 1920–

Northwestern University, Chicago, Illinois. (*University of Chicago,* 1859; Union College of Law affiliated with both universities, 1873–86; incorporated 1888; control assumed by Northwestern 1891) 1859

University of Michigan, Ann Arbor, Michigan. 1859–

McKendree College, Lebanon, Illinois. 1860–1901; East St. Louis, Illinois. 1891–95.

Iowa Law School, Des Moines, Iowa. 1865–68 (merged with State University of Iowa).

Washington and Lee University, Lexington, Virginia. (*Lexington Law School,* 1849–61; affiliated) 1866–

Washington University (St. Louis Law School), St. Louis, Missouri. 1867–

University of South Carolina, Columbia, South Carolina. 1867–68; 1869–73; *colored,* 1873–77; 1884–

Howard University (*colored*), Washington, District of Columbia. 1868–

State University of Iowa, Iowa City, Iowa. (See above, *Iowa Law School,* 1865) 1868–

University of Wisconsin, Madison, Wisconsin. 1868–

Trinity College, Randolph County, North Carolina. 1868–81; Raleigh, 1890–94; Durham, 1904–

University of Notre Dame, Notre Dame, Indiana. 1869–

St. Lawrence University, Canton, New York. 1869–72; Brooklyn Law School, New York City, New York. (1901; affiliated) 1903–

Georgetown University, Washington, District of Columbia. 1870–

National University, Washington, District of Columbia. 1870–

Richmond College, Richmond, Virginia. 1870–74; 1877–82. T. C. Williams School of Law. 1890–

University of Indianapolis (*Northwestern Christian College*, Butler College), Indianapolis, Indiana. 1870–74. (Indiana Law School, 1894; combined with Butler College as University of Indianapolis, 1896; Butler College withdraws from the University but remains associated, 1906) 1896–

Straight University (*colored*), New Orleans, Louisiana. 1870–89.

Lincoln University (*colored*), Oxford and West Chester, Pennsylvania. 1870–75.

Iowa Wesleyan University, Mt. Pleasant, Iowa. 1871–84.

Rutherford College, Happy Home, North Carolina. 1871–84.

University of Pittsburgh (*Western University of Pennsylvania*), Pittsburgh, Pennsylvania. 1871–73; 1895–

X Boston University, Boston, Massachusetts. 1872–

University of Missouri, Columbia, Missouri. 1872–

Trinity University, Tehuacana Hills, Texas. 1872–78.

Wilberforce University (*colored*), Xenia, Ohio. 1872–82.

Illinois Wesleyan University (Bloomington Law School), Bloomington, Illinois. 1874–

Vanderbilt University, Nashville, Tennessee. 1874–

Mercer University, Macon, Georgia. 1874–81; 1889–

Central University of Kentucky, Richmond, Kentucky. 1874–82; 1897–1901.

Lincoln College (*James Milliken University*), Lincoln, Illinois. 1874–76.

Drake University, Des Moines, Iowa. (*Iowa College of Law* affiliated with *Simpson Centenary College*, 1875; transferred to Drake University, 1881) 1875–

Southern University, Greensboro, Alabama. 1875–87.

University of Kansas, Lawrence, Kansas. 1878–

Hastings College of the Law (University of California), San Francisco, California. 1878–

West Virginia University, Morgantown, West Virginia. 1878–

Lehigh University, South Bethlehem, Pennsylvania. 1878–80.

Rust University (*Shaw University*) (*colored*), Holly Springs, Mississippi. 1878–80.

Valparaiso University (*Northern Indiana Law School*), Valparaiso, Indiana. 1879–

Walden University (*Central Tennessee College*) (*colored*), Nashville, Tennessee. About 1880–about 1917.

Chaddock College, Quincy, Illinois. 1880–86; 1887–1900. *Gem City Law School* (*Gem City Business College*) about 1904–about 1907.

Allen University (*colored*), Columbia, South Carolina. 1881–98.

Central Indiana Law School, Indianapolis, Indiana. About 1881–about 1890.

Nebraska Wesleyan University, University Place, Nebraska. 1882–85.

Arkansas Law School, Little Rock, Arkansas. (*Little Rock Law Class*, affiliated with *Little Rock University*, 1883; with *Arkansas Industrial University*, 1893) 1883–98. *Arkansas Industrial University*, Fayetteville. 1890–91. *University of Arkansas*, Little Rock. 1897–98. (These were separate institutions. The Arkansas Law School was started at Little Rock, in 1898. The *Arkansas Industrial University*, at Fayetteville, changed its name to *University of Arkansas*, and recognized this school as its department, in 1899. The connection was broken in 1915) 1898–

University of Texas, Austin, Texas. 1883–

Northwestern College of Law, Portland, Oregon. (University of Oregon, 1884; connection broken and new name adopted, 1915) 1884–

Willamette University, Salem, Oregon. 1884–

Lebanon University (*National Normal University*), Lebanon, Ohio. About 1884–1908.

Ohio Northern University (*Ohio Normal University*), Ada, Ohio. 1885–

Cornell University, Ithaca, New York. 1887–

University of Buffalo, Buffalo, New York. (Buffalo Law School, affiliated with *University of Niagara*, 1887; with University of Buffalo, 1889) 1887–

Chicago Kent College of Law, Chicago, Illinois. (*Afternoon law club*, 1887; incorporated as *Chicago College of Law* and affiliated with *Lake Forest University*, 1888; merged with *Kent Law School*, 1900; connection with University broken, 1902) 1888–

Central Normal College (*Indiana Central Law School*), Danville, Indiana. 1888–1917.

University of Minnesota, Minneapolis, Minnesota. 1888–

Emory *College*, Oxford, Georgia, 1888–91; 1898–1907. Emory University (Lamar School of Law), Atlanta, Georgia. 1916–

Shaw University (*colored*), Raleigh, North Carolina. 1888–1914.

Garfield University (*Central Memorial University*), Wichita, Kansas. 1888–about 1895.

University of Tennessee, Knoxville, Tennessee. (*Private school*, affiliated 1889; moved to university campus, 1891) 1889–

Baltimore University, Baltimore, Maryland. 1889–1911 (merged with *Baltimore Law School*).

Northern Illinois College of Law (*Northern Illinois Normal Institute*), Dixon, Illinois. 1889–about 1910.

Atlanta Law School, Atlanta, Georgia. (Incorporated 1890; affiliated with *Southern Medical College*, 1891; independent charter, 1892) 1890–98; 1900–01; 1908–

Metropolis Law School, New York City, New York. (*Evening law school*, 1888; chartered by Regents) 1890–95 (merged with New York University).

Ohio State University, Columbus, Ohio. (*Law Club*, 1890; affiliated) 1891–

Detroit College of Law, Detroit, Michigan. (Incorporated 1891; control acquired by Y. M. C. A., 1915) 1891–

New York Law School, New York City, New York. (Chartered by Regents, 1891; by legislature, 1897) 1891–

University of Nebraska, Lincoln, Nebraska. (*Central Law College,* 1888; affiliated) 1891–

University of Denver, Denver, Colorado. (*Blackstone class,* 1888; affiliated) 1892–

University of Colorado, Boulder, Colorado. 1892–

Western Reserve University (Franklin T. Backus Law School), Cleveland, Ohio. 1892–

Southern Normal University, Huntington, Tennessee. 1892–about 1910.

Kent Law School, Chicago, Illinois. 1892–1900 (merged with Chicago Kent).

University of the South, Sewanee, Tennessee. 1893–1910.

Fort Worth University, Fort Worth, Texas. 1893–1907.

Wake Forest College, Wake Forest, North Carolina. 1894–

Centre College (Danville College of Law, Central University of Kentucky), Danville, Kentucky. 1894–1912.

American University of Harriman (American Temperance University), Harriman, Tennessee. 1894–1902.

Temple University, Philadelphia, Pennsylvania. 1895–

Syracuse University, Syracuse, New York. 1895–

Catholic University of America, Washington, District of Columbia. 1895–

Kansas City School of Law, Kansas City, Missouri. 1895–

Union University (*Southwestern Baptist University*), Jackson, Tennessee. 1895–1906; 1919–

Benton College of Law, St. Louis, Missouri. (1895; incorporated) 1896–

Millsaps College, Jackson, Mississippi. 1896–1919.

Chicago Law School (Chicago Seminar of Science, *Midland University*), Chicago, Illinois. 1896–

Morris Brown College (colored), Atlanta, Georgia. 1896–1907.

Aurora College, Aurora, Illinois. 1896–1901.

De Paul University, Chicago, Illinois. (Illinois College of Law, 1896, incorporated 1897. *Illinois Law School* incorporated separately for evening classes, 1909. Both institutions affiliated with the University, but conducted in different locations, 1912; brought together, 1915) 1897–

Cleveland Law School, Cleveland, Ohio. (*Baldwin University,* 1897. *Cleveland College of Law,* 1897. Two institutions merged, incorporated and affiliated with the University, later Baldwin-Wallace College, 1899) 1897–

University of Illinois, Urbana, Illinois. 1897–

Campbell University, Holton, Kansas. 1897–1904.

University of Southern California, Los Angeles, California. (*Law School Association,* 1896; incorporated as *Los Angeles Law School,* 1898; affiliated with the University, 1901) 1898–

Washington College of Law, Washington, District of Columbia. (*Woman's Law Class*, 1896; incorporated) 1898–

Benjamin Harrison Law School, Indianapolis, Indiana. (*National Correspondence Schools, Indianapolis College of Law*, 1898. *American Central Law School*, a secession from this, 1909; incorporated, 1911. The two merged, 1914; new charter and name, 1915) 1898–

Marion Normal College and Business University (*Marion Law School*), Marion, Indiana. 1898–1912. (Removed to Muncie, Indiana, and name changed to *Muncie Normal Institute*, later *Muncie National Institute*) 1912–about 1917.

University of Maine, Bangor, Maine. 1898–1918. Orono, Maine, 1918–20.

Highland Park College, Des Moines, Iowa. 1898–1904.

Leland Stanford Junior University, Stanford University, California. (Partial law course, 1894; developed) 1899–

John Marshall Law School, Chicago, Illinois. 1899–

Chattanooga College of Law, Chattanooga, Tennessee. (*U. S. Grant University*, 1899; connection broken, 1910) 1899–

University of Washington, Seattle, Washington. 1899–

Southern Minnesota Normal College (*Austin College of Law*), Austin, Minnesota. 1899–about 1910.

Cincinnati Y. M. C. A. Night Law School (McDonald Educational Institute), Cincinnati, Ohio. (1893; authority to confer degrees secured) 1900–

University of North Dakota, Grand Forks, North Dakota. 1900–

John B. Stetson University, De Land, Florida. 1900–

St. Paul College of Law, St. Paul, Minnesota. 1900–

State Normal College, Terre Haute, Indiana. About 1900–01.

Southern Law College, Nashville, Tennessee. 1900–about 1902.

Baltimore Law School, Baltimore, Maryland. 1900; affiliated with *Baltimore Medical College*, 1903–13 (both institutions merged with University of Maryland).

University of California, Berkeley, California. (*Department of Jurisprudence*, 1894; developed) 1901–

University of South Dakota, Vermillion, South Dakota. 1901–

University of Chicago, Chicago, Illinois. 1902–

Oregon Law School, Salem, Oregon. 1902–06. Portland, Oregon, 1906–

Tri-State College (*Angola Law School*), Angola, Indiana. 1902–

Bowling Green Normal School and Business University, Bowling Green, Kentucky. By 1902–by 1908.

Bethany College, Lindsborg, Kansas. 1902–08.

Washburn College, Topeka, Kansas. 1903–

Metropolitan Business College, Chicago, Illinois. 1903–04.

Northeastern College, Boston, Massachusetts. (*Lowell Institute*, 1897; Boston Y. M. C. A. Evening Law School, 1898; incorporated with power to confer degrees, 1904; combined with other Y. M. C. A. schools to form College, 1916) 1904–

Potomac University, Washington, District of Columbia. 1904–about 1917.
Creighton University, Omaha, Nebraska. 1904–
Jefferson School of Law, Louisville, Kentucky. 1905–
Fordham University, New York City, New York. 1905–
Louisiana State University, Baton Rouge, Louisiana. 1906–
Lima College, Lima, Ohio. 1906–07.
San Francisco Law School, San Francisco, California. 1907–
Epworth University, Oklahoma City, Oklahoma. 1907–10.
Marquette University, Milwaukee, Wisconsin. (*Milwaukee Law School*, 1893; *Milwaukee University Law School*, 1906; both purchased) 1908–
Oriental University, Washington, District of Columbia. 1908–about 1917.
New Jersey Law School (*Newark Law School*), Newark, New Jersey. 1908–
Toledo University, Toledo, Ohio. (*Y. M. C. A. class*, 1906; authority to confer degrees secured, 1908; affiliated with the University, 1909) 1908–
Portland Law School, Portland Oregon. 1908–15.
Loyola University (*Lincoln Law School*), Chicago, Illinois. 1908–
University of Kentucky, Lexington, Kentucky. 1908–
St. John's University, Toledo, Ohio. 1908–
University of Oklahoma, Norman, Oklahoma. 1909–
University of Idaho, Moscow, Idaho. 1909–
University of Florida, Gainesville, Florida. 1909–
University of Memphis, Memphis, Tennessee. 1909–
Lincoln-Jefferson University, Hammond, Indiana. 1909–13.
Oakland College of Law, Oakland, California. About 1910–about 1917.
University of Omaha, Omaha, Nebraska. (Omaha School of Law, *Western School of Law*, 1897; affiliated) 1910–
San Francisco Y. M. C. A., San Francisco, California. (1901; incorporated with power to confer degrees) 1910–
University of Utah, Salt Lake City, Utah. (Partial course, 1905; developed) 1910–
Hamilton College of Law, Chicago, Illinois. 1910–20.
State University (Central Law School) (*colored*), Louisville, Kentucky. 1910–14; 1919–
University of Santa Clara, San José, California. (Partial course about 1909; developed) 1911–
Lincoln College of Law, Springfield, Illinois. 1911–
University of Montana, Missoula, Montana. 1911–
Northern Indiana Law School, South Bend, Indiana. 1911–14.
University of West Tennessee (*colored*), Memphis, Tennessee. 1911–12.
City College of Law and Finance, St. Louis, Missouri. (*Metropolitan College of Law*, 1901; interests affiliated) 1912–
Gonzaga University, Spokane, Washington. 1912–

Duquesne University of the Holy Ghost, Pittsburgh, Pennsylvania. 1912–

University of Detroit, Detroit, Michigan. 1912–

St. Ignatius College, San Francisco, California. 1912–

Northwestern College of Law, Minneapolis, Minnesota. 1912–

Webster College of Law, Chicago, Illinois. 1912–

Tacoma School of Law, Tacoma, Washington. (*University of Puget Sound*, 1912; connection broken) 1913–20.

Bismarck Law College, Bismarck, North Dakota. 1912–13.

Minneapolis College of Law, Minneapolis, Minnesota. (*Private class* affiliated with *Y. M. C. A.*, 1909; with *University Extension Society*, 1911; incorporated as above) 1912–13.

Southwestern University, Los Angeles, California. (*Southwestern College of Law*, incorporated 1911; University charter secured) 1913–

University of Oregon, Eugene, Oregon. (Compare Northwestern College of Law, 1884) 1913–

Westminster Law School, Denver, Colorado. (Originally affiliated with *Westminster College*) 1913–

Minnesota College of Law, Minneapolis, Minnesota. 1913–

Wilmington Law School, Wilmington, North Carolina. 1913–

Suffolk Law School, Boston, Massachusetts. (*Class*, 1906; incorporated 1911; reincorporated with power to confer degrees) 1914–

Loyola University, New Orleans, Louisiana. 1914–

University of Arizona, Tucson, Arizona. 1915–

Northern Illinois University, Chicago, Illinois. 1915–16.

John Marshall School of Law, Cleveland, Ohio. (1916; affiliated with Ohio Northern University) 1917–

Texas Christian University, Fort Worth, Texas. 1917–20.

Portia Law School, Boston, Massachusetts. (1908; incorporated 1918; reincorporated with power to confer degrees) 1919–

Northeastern College (Y. M. C. A.), Springfield, Massachusetts. 1919–

Northeastern College (Y. M. C. A.), Worcester, Massachusetts. 1919–

Lincoln Memorial University, Harrogate, Tennessee. 1919–

Los Angeles School of Law, Los Angeles, California. (1915; regular sessions resumed January, 1920) 1920–

Association Institute (Y. M. C. A.), Washington, District of Columbia. January, 1920–

Youngstown Association School (Y. M. C. A.), Youngstown, Ohio. (1911; authority to confer degrees secured February, 1920) 1920–

Northeastern College (Y. M. C. A.), Providence, Rhode Island. 1920–

B. PRIVATE LAW SCHOOLS NOT CONFERRING DEGREES

Law schools not conferring degrees can be started so easily, and develop out of attorneys' classes by gradations so insensible, that no full or precise list of such institutions can be drawn up. Below will be found notes in regard to all such schools that are known to have existed prior to the Civil War, including those mentioned parenthetically in the preceding list as subsequently affiliated with colleges or universities. In order to make clear the geographical extension of the early private law school movement, schools contemporary with Litchfield are arranged by states; later schools are arranged chronologically. A brief statement is added in regard to schools started since the Civil War, not already mentioned in List A.

In the case of a few schools started between 1850 and 1890, it is not absolutely certain that degrees may not have been conferred. These schools are included here, rather than in the preceding list, because no positive evidence to this effect has been discovered.

Schools Contemporary with Litchfield

Connecticut

For the Litchfield Law School (about 1784–1833), see Chapter XII.

Seth P. Staples, a pupil of David Daggett (Chapter XIII), who was himself a pupil of Charles Chauncey (Chapter XII), was admitted to the New Haven bar in 1799. Having imported the following year an unusually good law library, his office was much sought after by law students. Among these was Samuel J. Hitchcock, who was admitted to the bar in 1815 and taken in by Staples as partner in his law firm in 1817. In 1824 Judge Daggett succeeded Staples as senior partner in the now established "school," and affiliation was secured with Yale College (Chapter XIII).

Sylvester Gilbert, a pupil of Jesse Root (Chapter XII), conducted a school at Hebron from 1810 to 1816, with a total attendance of fifty-six.

Judge Zephaniah Swift, who succeeded Reeve of Litchfield as Chief Justice in 1815, and died in 1823, conducted a law school at Windham.

Massachusetts

Judge Samuel Howe, a Litchfield student in 1805, started in 1823, with an assistant, a school at Northampton. In 1827 John Hooker Ashmun was called in to assist. When the Harvard law school was reorganized in 1829 Ashmun was taken over, and this, with Judge Howe's death, killed the school (Chapter XIII).

Theron Metcalf, a Litchfield student in 1806, opened a school at Dedham in 1828, undoubtedly killed at once by Harvard competition.

Samuel F. Dickinson in the summer of 1828 and again in 1829, advertised his intention to open a school at Amherst the following autumn, but there is no evidence to show that he secured any students.

New York

Peter Van Schaak, at Kinderhook, between 1786 and 1828, is said to have instructed "nearly a hundred young gentlemen."

The New York Law Institute (Chapter XIX), founded in 1826, and formally organized in 1828 with Kent as president, was incorporated in 1830 "for literary purposes, the cultivation of legal science, the advancement of jurisprudence, the providing of a seminary of learning in the law, and the formation of a law library." The institution seems to have been designed to combine the educational activities of Du Ponceau's Law Academy (see below) with the library facilities offered by the Law Association of Philadelphia, and to have taken its name from Hoffman's Maryland Law

Institute (Chapter XI). Lectures were attempted prior to incorporation, but without success, and in 1835 a separate moot court and lecture society was organized under the name of the Law Association of the City of New York. As a library company the Institute still survives.

Pennsylvania

Peter S. Du Ponceau, who as far back as 1784 had been a member of a society of law students and younger practitioners, established a Law Academy in Philadelphia in 1821 (Chapter XIX). The plan was to supplement the practical office work with moot court work and lectures. In his inaugural address he exhorted his hearers to "show yourselves worthy of the honor of being considered as the founders of a National Law School in the United States." This interesting attempt to build up a law school that should supplement rather than compete with the law office did not succeed. In 1832 the Academy addressed a petition to the University of Pennsylvania to enter the field of legal education. Reorganized the same year on less ambitious lines, and incorporated in 1838, it still survives as a moot court society.

Maryland

Judge Walter Dorsey of the Court of Appeals, at his death in 1823, had a "large and successful law school" in Baltimore.

Virginia

Judge Creed Taylor started a school at Needham in 1821 which had an average attendance of twenty.

Between 1824 and 1830 Chancellor Henry St. George Tucker, whose father and elder brother both taught law at William and Mary, who himself later became professor of law at the University of Virginia, and whose son and grandson were deans of the law school of Washington and Lee, conducted a private school at Winchester.

In 1830 John Taylor Lomax (Chapter X), after resigning his professorship of law at the University of Virginia to go on the bench, conducted a private school at Fredericksburg.

North Carolina

John Louis Taylor, Chief Justice from 1808 until his death in 1829, and Archibald Debow Murphey, who retired from the bench in 1820 and died in 1832, are said to have conducted schools.

Schools Started between the Close of the Litchfield Law School and the Civil War

Ohio. Edward King of New York, a Litchfield student in 1813, Timothy Walker, who had studied law at Harvard, and Judge John C. Wright started the Cincinnati Law School in 1833. Two years later this was affiliated with Cincinnati College, and survives as the present law department of the University of Cincinnati (Chapter XVII).

Georgia. William T. Gould, a son and pupil of the Litchfield Gould, started a school in Augusta in 1833. In its second year it had nineteen students; in its third year, fifteen.

North Carolina. Richmond M. Pearson, shortly after becoming a judge of the Superior Court in 1836, started a law school at Mockville, subsequently removed to Richmond Hill, near Asheville. From 1858 till his death in 1878 Judge Pearson was Chief Justice. The school, during its forty years' existence, is said to have been attended by hundreds of students from this and neighboring states. The lectures delivered by Judge Pearson were published in 1879.

Georgia. Joseph H. Lumpkin started a school at Athens in 1843, which at once became affiliated with the State University and still survives.

North Carolina. Judge William H. Battle started a school at Chapel Hill in 1843. Two years later this was affiliated with the State University and still survives.

Pennsylvania. David Hoffman (Chapter XI), after having failed to build up a successful law faculty in the University of Maryland, conducted a private law school in Philadelphia, between 1844 and 1847, under the name of the "Philadelphia Law Institution."

Pennsylvania. In 1846 Washington McCartney opened a school at Easton, incorporated in 1854 under the name of the "Union Law School." Although McCartney was Professor of Mental Philosophy in Lafayette College, there is no evidence that the college recognized his school. It seems to have been rather a rival than a continuation of a slightly earlier school affiliated with the college. McCartney died in 1856.

Virginia. Judge John W. Brockenbrough conducted the Lexington Law School as a private venture from 1849 till the Civil War. In 1866 this became affiliated with Washington College (later Washington and Lee University) and still survives.

Ohio. Judge Chester Hayden started the Ohio State and Union College of Law in Poland, in 1856, and the following year removed it to Cleveland. He was succeeded by General John Crowell, who kept the school alive, with a two-year course, until about 1875.

Schools Started after the Civil War

The Reports of the U. S. Commissioner of Education mention the following schools as having been started at the dates noted:

1867. Col. G. N. Folk's school, at Boone, North Carolina. In existence 1889.

1875. Neophogen Law School, Gallatin, Tennessee.

1878. St. Joseph Law School, St. Joseph, Missouri.

1882. Cleveland Law School, Cleveland, Ohio. In existence for several years. Not to be confused with Ohio State and Union, nor with the present Cleveland Law School.

1883. Keokuk College of Law, Keokuk, Iowa.

During the course of the present enquiry there were found, scattered through the country, about a dozen "schools," offering work in professional law but not conferring degrees, and about the same number of even less pretentious "classes." These were sometimes independent, sometimes supported by the Y. M. C. A., or by business colleges. In addition, a large number of institutions offer instruction in "commercial" or "business" law.

C. CONTEMPORARY LAW SCHOOLS

This list is believed to include all institutions in the United States that during the academic year 1920–21 offered to resident students instruction leading to a law degree. The symbols at the right indicate the minimum amount of time that students were required to devote to their education, both general and professional.

Roman numerals, I, II, III, denote the minimum number of years that must have been spent in a college in order to secure admission to the law school as regular candidates for the regular law degree. The absence of a Roman numeral denotes accordingly that only a high school education, or even less, is required. The symbol *III signifies that three years of college work will suffice only in case the full requirements for a college degree have been satisfied during this period.

The letter M signifies that sessions are held in the morning hours for students who are supposed to devote their full time to their school work whether or not they attend part of their classes at other hours.

The letter A signifies that the entire course may be covered in classes that meet only at such daytime hours—usually in the afternoon, but sometimes also in the early morning or at the lunch hour—as are convenient for students engaged in other occupations.

The letter E signifies that the entire course may be covered in evening classes, similarly intended for students who devote only a part of their working hours to their studies.

Arabic numerals, 1, 2, 3, 4, denote the length of the law school course in academic years; when the calendar year is divided into four academic quarters, three such quarters are counted as equal to one academic year.

The term "Equivalent" is used in a narrow sense, to signify that in place of one year of college work, followed by one year devoted exclusively to law, two years, each of which contains both college and law work, may be substituted.

Many minor variations cannot be noted in condensed tabular form. A comprehensive discussion of the amount of time devoted by students to their education would include the shading of entrance requirements in the case of students with military service records, students of unusual maturity, special students, candidates for a special degree; the requirement, by certain schools, of a college degree from applicants not in their own university, and the effect of the advanced standing rule upon this; the relative likelihood that a college degree may be obtained in three years, among schools that require it; the requirement for regular admission of maturity, or of education beyond that given by most high schools, but not necessarily obtained in a college; the requirement of college work, or of a college degree, for graduation, but not for admission; the extent to which degree credit is given for evening work, in schools offering both full-time and part-time courses; failure on the part of certain schools, requiring three years for their degree, to organ-

ize, as yet, a third year; the distinction between a two-year course and a three-year course listed as two years because it may be covered, at least by some students, in this time; differences, finally, in the length of the academic year or in the number of hours devoted weekly to class sessions.

The concluding summary shows how the one hundred and forty-two schools may be divided into four broadly distinguished groups, in accordance with the important variations in type indicated in Chapter XXXIII. It should be emphasized that the distinctions between schools of any one group are often as great as are the distinctions between the groups. The suggested grouping is purely tentative, and is not to to be regarded as a "classification" of law schools according to their merits.

	Alabama	
Tuscaloosa	University of Alabama, School of Law	M3
	Arizona	
Tucson	University of Arizona, School of Law	IM3
	Arkansas	
Little Rock	Arkansas Law School	E2
	California	
Berkeley	University of California, School of Jurisprudence	IIIM3 or IIM4
Los Angeles	Los Angeles School of Law	M3 A3 E3
	University of Southern California, College of Law	IM3 IE5
	Southwestern University, School of Law	M3 E4
San Francisco	University of California, Hastings College of the Law	IIM3
	St. Ignatius College, The College of Law	E4
	San Francisco Law School	E4
	Y. M. C. A., Evening Law College	E4
San José	University of Santa Clara, Institute of Law	IIE3
Stanford University	Leland Stanford Junior University, The Law School	IIM3
	Colorado	
Boulder	University of Colorado, School of Law	IIM3
Denver	University of Denver, School of Law	IA3
	Westminster Law School	E3

Connecticut

New Haven	Yale University, School of Law	IIIM3

District of Columbia

Washington	The Catholic University of America, The School of Law	M3
	Georgetown University, The Law School	A3
	George Washington University, Law School	M3 A3
	Howard University, The School of Law (*colored*)	E3
	National University, Law School	E2
	Washington College of Law	A3
	Y. M. C. A., Association Institute, Law School	A3

Florida

De Land	John B. Stetson University, College of Law	M2
Gainesville	University of Florida, College of Law	M3

Georgia

Athens	University of Georgia, Law Department	M3
Atlanta	Atlanta Law School	E2
	Emory University, The Lamar School of Law	IIM3
Macon	Mercer University, The School of Law	E2

Idaho

Moscow	University of Idaho, College of Law	IM3

Illinois

Bloomington	Illinois Wesleyan University, College of Law	A3
Chicago	Chicago Kent College of Law	E3
	Chicago Law School	A3 E3
	De Paul University, College of Law	M3 E4
	The John Marshall Law School	A3 E3
	Loyola University, Department of Law	E4
	Northwestern University, School of Law	*IIIM3 or IIIM4
	University of Chicago, The Law School	IIIM3
	Webster College of Law	E3
Springfield	Lincoln College of Law	E4
Urbana	University of Illinois, College of Law	IIM3 or Equivalent

Indiana

Angola	Tri-State College, School of Law	A2
Bloomington	Indiana University, School of Law	IIM3
Indianapolis	Benjamin Harrison Law School	E2
	University of Indianapolis, Indiana Law School	M3
Notre Dame	University of Notre Dame, College of Law	IM3 or Equivalent
Valparaiso	Valparaiso University, The Law School	M3

Iowa

Des Moines	Drake University, The College of Law	M3
Iowa City	State University of Iowa, College of Law	IIM3

Kansas

Lawrence	University of Kansas, School of Law	IM3
Topeka	Washburn College, School of Law	IM3 or Equivalent

Kentucky

Lexington	University of Kentucky, College of Law	M3
Louisville	Jefferson School of Law	E2
	University of Louisville, Law Department	A3
	State University, Central Law School (*colored*)	E3

Louisiana

Baton Rouge	Louisiana State University, Law School	IM3
New Orleans	Loyola University, School of Law	E3
	The Tulane University of Louisiana, College of Law	IM3

Maryland

Baltimore	University of Maryland, The School of Law	E3

Massachusetts

Boston	Boston University, The School of Law	M3
	Y. M. C. A., Northeastern College, School of Law	E4
	Portia Law School	A4 E4
	Suffolk Law School	E4
Cambridge	Harvard University, Law School	*IIIM3
Springfield	Y. M. C. A., Northeastern College, School of Law, Springfield Division	E4
Worcester	Y. M. C. A., Northeastern College, School of Law, Worcester Division	E4

Michigan

Ann Arbor	University of Michigan, Law School	IIM3
Detroit	Y. M. C. A., Detroit College of Law	A3 E3
	University of Detroit, Law School	A3 E3

Minnesota

Minneapolis	Minnesota College of Law	E3
	Northwestern College of Law	E3
	University of Minnesota, the Law School	IIM3
St. Paul	St. Paul College of Law	E4

Mississippi

Oxford	University of Mississippi, School of Law	M2

Missouri

Columbia	University of Missouri, School of Law	IM3
Kansas City	Kansas City School of Law	A4 E4
St. Louis	Benton College of Law	E4
	City College of Law and Finance, School of Law	A3 E3
	St. Louis University, Institute of Law	A3 E4
	Washington University, The School of Law	IM3

Montana

Missoula	University of Montana, The School of Law	IIM3

Nebraska

Lincoln	The University of Nebraska, The College of Law	IM3
Omaha	Creighton University, College of Law	IM3 E4
	University of Omaha, Omaha School of Law	E4

New Jersey

Newark	New Jersey Law School	A3 E3

New York

Albany	Union University, Albany Law School	M3
Buffalo	University of Buffalo, Department of Law	M3
Ithaca	Cornell University, College of Law	IIM3
New York City	St. Lawrence University, Brooklyn Law School	A3 E3
	Columbia University, School of Law	IIIM3
	Fordham University, School of Law	A3 E3
	New York Law School	A3 E3
	New York University, School of Law	M3 A3 E3

Syracuse	Syracuse University, College of Law	IM3

North Carolina

Chapel Hill	University of North Carolina, The School of Law	IIM3
Durham	Trinity College, School of Law	IIM3
Wake Forest	Wake Forest College, School of Law	M3
Wilmington	Wilmington Law School	E2

North Dakota

Grand Forks	The University of North Dakota, School of Law	IIM3

Ohio

Ada	Ohio Northern University, College of Law	M3
Cincinnati	University of Cincinnati, College of Law	IM3
	Y. M. C. A., Night Law School	E4
Cleveland	Baldwin-Wallace College, The Cleveland Law School	E3
	Western Reserve University, Franklin Thomas Backus Law School	IIIM3
	Ohio Northern University, The John Marshall School of Law	A3 E3
Columbus	The Ohio State University, College of Law	IIM3
Toledo	St. John's University, Department of Law	E3
	Toledo University, College of Law	E4
Youngstown	Y. M. C. A., Youngstown Association School, Youngstown School of Law	A4 E4

Oklahoma

Norman	The University of Oklahoma, The School of Law	M3

Oregon

Eugene	University of Oregon, The Law School	IIM3
Portland	Northwestern College of Law	E3
	Oregon Law School	E3
Salem	Willamette University, College of Law	A3

Pennsylvania

Carlisle	Dickinson College, The Dickinson School of Law	M3
Philadelphia	The Temple University, The School of Law	E4
	University of Pennsylvania, The Law School	*IIIM3
Pittsburgh	Duquesne University of the Holy Ghost, School of Law	A3
	University of Pittsburgh, School of Law	IIIA3

Rhode Island

Providence	Y. M. C. A., Northeastern College, School of Law, Providence Division	E4

South Carolina

Columbia	University of South Carolina, School of Law	M2

South Dakota

Vermillion	University of South Dakota, College of Law	IIM3

Tennessee

Chattanooga	Chattanooga College of Law	E2
Harrogate	Lincoln Memorial University, Law Department	M2
Jackson	Union University, Law School	M2
Knoxville	The University of Tennessee, College of Law	IM3
Lebanon	Cumberland University, Law School	M1
Memphis	University of Memphis, Law School	E2
Nashville	Vanderbilt University, The Law School	M3

Texas

Austin	The University of Texas, School of Law	IIM3
Waco	Baylor University, Law Department	IA3

Utah

Salt Lake City	University of Utah, The School of Law	IM3

Virginia

Charlottesville	University of Virginia, Department of Law	IM3
Lexington	Washington and Lee University, School of Law	M3
Richmond	Richmond College, T. C. Williams School of Law	E3
Williamsburg	College of William and Mary, Marshall Wythe School of Government and Citizenship	IIM3

Washington

Seattle	University of Washington, School of Law	IIM3
Spokane	Gonzaga University, Department of Law	IIE4

West Virginia

Morgantown	West Virginia University, The College of Law	IM3

Wisconsin

Madison	The University of Wisconsin, Law School	IIM3
Milwaukee	Marquette University, College of Law	IM3 or Equivalent E4

SUMMARY

High-entrance full-time schools		
*IIIM3	2	
*IIIM3 or IIIM4	1	
IIIM3	4	
III A3	1	
IIIM3 or IIM4	1	
IIM3	20	
IIM3 or Equivalent	1	30 (*21%*)
Low-entrance schools offering full-time courses of standard length		
IM3	14	
IM3 or Equivalent	2	
M3	17	
IM3 IE5	1	
IM3 E4	1	
IM3 or Equivalent E4	1	
M3 A3	1	
M3 E4	2	
M3 A3 E3	2	41 (*29%*)

Part-time schools offering courses of standard length		
IA3	2	
A4 E4	3	
A3 E4	1	
A3	7	
A3 E3	10	
IIE4	1	
E4	16	
IIE3	1	
E3	14	55 (*39%*)
Short-course schools		
M2	5	
M1	1	
A2	1	
E2	9	16 (*11%*)
Total number of schools		142 (*100%*)

I, II, III, denote the number of academic years required to have been spent in a college prior to admission ; *, that a college degree must have been obtained.

M (morning) denotes that the law course requires the student's full time; A (afternoon), E (evening), only part of his time, while in residence.

1, 2, 3, 4, denote the number of years residence required to complete the law course.

"Equivalent" denotes a dovetailing of college and law school work, not affecting the total.

The symbols in all cases denote the requirements in force during the academic year 1920–21. Announcements of future changes are not included.

§ II. STATISTICAL TABLES

TABLE 1. BASIC FIGURES

	1850	*1860*	*1870*	*1880*	*1890*	*1900*	*1910*
Population[1]	23,192,000	31,443,000	38,558,000	50,156,000	62,948,000	75,995,000	91,972,000
Number of lawyers[2]	23,939	34,839	40,736	64,137	89,630	114,460	122,149
Number of lawyers to each hundred thousand of the population	*103*	*111*	*105*	*128*	*142*	*151*	*133*
Number of law schools[3]	15	21	31	51	61	102	124
Number of law schools to each ten million of the population	*6*	*7*	*8*	*10*	*10*	*13*	*13*
Number of law school students[4]	400	1,200	1,653	3,134	4,518	12,516	19,567
Number of law school students to each hundred thousand of the population	*2*	*4*	*4*	*6*	*7*	*16*	*21*
Number of students graduating[5]	...	...	...	1,089	1,424	3,241	4,233
Number graduating to each hundred thousand of the population	...	...	...	*2*	*2*	*4*	*5*

TABLE 2. LAWYERS COMPARED WITH PHYSICIANS AND CLERGYMEN[6]

	1850	*1860*	*1870*	*1880*	*1890*	*1900*	*1910*
Physicians	40,765	55,159	62,448	85,671	104,805	132,002	157,966
Clergymen	26,842	37,529	43,874	64,698	88,203	111,638	133,988
Lawyers	23,939	34,839	40,736	64,137	89,630	114,460	122,149
Total	91,546	127,527	147,058	214,506	282,638	358,100	414,103

Number to each hundred thousand of the population

Physicians	*176*	*175*	*162*	*171*	*167*	*173*	*172*
Clergymen	*116*	*119*	*114*	*129*	*140*	*147*	*145*
Lawyers	*103*	*111*	*105*	*128*	*142*	*151*	*133*
Total	*395*	*405*	*381*	*428*	*449*	*471*	*450*

[1] Excluding Alaska and outlying possessions. Population in 1920, 105,711,000.

[2] By U. S. census, first computed in 1850. Figures for 1920 have not yet been published. The census of 1870 was concededly so inaccurate that no weight should be attached to the apparent relative decrease shown for that year.

Figures prior to 1850 are difficult to secure. In 1818, lawyers in the state of New York, numbering 1200 in a population of about 1,200,000, were called by a contemporary "as plentiful as blackberries" (Warren, *History of the American Bar*, 301). As appears from the table, this blackberry standard (100 per 100,000) was attained in 1850 by the country as a whole. The New York figure in 1910 was 189 per 100,000.

[3] For earlier and later years, see Table 6. The number in 1916–17 was 140; in 1919–20, 143 (14 per 10,000,000); in 1920–21, 142.

[4] The figures for 1850 and 1860 are rough estimates. Those for subsequent years are as reported to the U. S. Commissioner of Education. For later years, see Table 4. The figure for 1915–16 was 22,993 (23 per 100,000).

[5] As reported to the U. S. Commissioner of Education. For later years, see Table 5. The figure for 1915–16 was 4323 (4 per 100,000).

[6] By U. S. census. For comments on these figures, see 9 *Annual Report, Carnegie Foundation* (1914), 17.

TABLE 3. LAW SCHOOLS COMPARED WITH MEDICAL AND THEOLOGICAL SCHOOLS

a. By decades from the beginning

	1790	*1800*	*1810*	*1820*	*1830*	*1840*	*1850*	*1860*	*1870*	*1880*	*1890*	*1900*	*1910*	*1917*
Medical schools[1]	2	4	6	12	21	33	52	65	75	100	133	160	131	96
Theological schools[2]	...	...	...	...	...	...	...	...	80	142	145	154	184	...
Law schools	1	2	2	3	6	7	15	21	31	51	61	102	124	140

b. By years since 1909–10

	1910	*1911*	*1912*	*1913*	*1914*	*1915*	*1916*	*1917*	*1918*	*1919*	*1920*	*1921*
Medical schools[1]	131	122	118	107	102	96	95	96	90	85	85	84
Theological schools[2]	184	193	182	179	176	164	169	...	...	...	...	...
Law schools	124	123	132	139	140	138	139	140	135	135	143	142

TABLE 4. LAW SCHOOL STUDENTS COMPARED WITH MEDICAL AND THEOLOGICAL STUDENTS[2]

	1870	*1880*	*1890*	*1900*	*1910*	*1911*	*1912*	*1913*	*1914*	*1915*	*1916*
Medicine	6,194	11,929	15,484	25,213	21,394	19,146	18,452	17,238	16,940	15,182	14,767
Theology	3,254	5,242	7,013	8,009	11,012	10,834	11,242	10,965	11,269	10,588	12,061
Law	1,653	3,134	4,518	12,516	19,567	19,615	20,760	20,878	20,958	21,923	22,993

Number to each hundred thousand of the population

Medicine	*16*	*24*	*25*	*33*	*23*	*21*	*19*	*18*	*17*	*15*	*15*
Theology	*8*	*10*	*11*	*11*	*12*	*12*	*12*	*11*	*12*	*11*	*12*
Law	*4*	*6*	*7*	*16*	*21*	*21*	*22*	*22*	*22*	*23*	*23*

TABLE 5. LAW GRADUATES COMPARED WITH MEDICAL AND THEOLOGICAL GRADUATES[2]

	1880	*1890*	*1900*	*1910*	*1911*	*1912*	*1913*	*1914*	*1915*	*1916*
Medicine	3,241	4,556	5,219	4,448	4,023	4,215	3,426	4,043	3,745	3,436
Theology	719	1,372	1,773	1,759	1,877	1,941	1,977	1,886	1,872	2,090
Law	1,089	1,424	3,241	4,233	3,901	4,394	4,427	4,496	4,427	4,323

Number to each hundred thousand of the population

Medicine	*6*	*7*	*7*	*5*	*4*	*4*	*4*	*4*	*4*	*3*
Theology	*1*	*2*	*2*	*2*	*2*	*2*	*2*	*2*	*2*	*2*
Law	*2*	*2*	*4*	*5*	*4*	*5*	*5*	*5*	*4*	*4*

[1] Figures of American Medical Association.

[2] As reported to the U. S Commissioner of Education.

TABLE 6. LAW SCHOOLS STARTED AND IN OPERATION AT DIFFERENT PERIODS

a. By decades from the beginning

	Schools started	*Schools in Operation during Academic Year ending:*													
		1790	*1800*	*1810*	*1820*	*1830*	*1840*	*1850*	*1860*	*1870*	*1880*	*1890*	*1900*	*1910*	*1917*
1779–1790	1	1	1	1	1	1	1	1	1	0	0	0	0	0	0
1790–1800	3	--	1	1	1	1	1	1	3	3	2	2	2	3	2
1800–1810	0	--	--	0	0	0	0	0	0	0	0	0	0	0	0
1810–1820	1	--	--	--	1	1	1	1	1	1	1	1	1	1	1
1820–1830	4	--	--	--	--	3	2	2	2	3	4	4	4	4	4
1830–1840	3	--	--	--	--	--	2	2	2	3	3	2	3	3	3
1840–1850	10	--	--	--	--	--	--	8	6	5	7	7	7	8	8
1850–1860	8	--	--	--	--	--	--	--	6	6	5	5	4	4	4
1860–1870	11	--	--	--	--	--	--	--	--	10	8	8	8	9	9
1870–1880	26	--	--	--	--	--	--	--	--	--	21	12	16	15	15
1880–1890	22	--	--	--	--	--	--	--	--	--	--	20	18	14	13
1890–1900	43	--	--	--	--	--	--	--	--	--	--	--	39	30	28
1900–1910	39	--	--	--	--	--	--	--	--	--	--	--	--	33	28
1910–1917	31	--	--	--	--	--	--	--	--	--	--	--	--	--	25
Total	202	1	2	2	3	6	7	15	21	31	51	61	102	124	149

b. By years since 1909–10

	Schools started	*Schools in Operation during Academic Year ending:*											
		1910	*1911*	*1912*	*1913*	*1914*	*1915*	*1916*	*1917*	*1918*	*1919*	*1920*	*1921*
Prior to Civil War	30	23	23	23	22	22	22	22	22	22	22	22	24
1860–1870	11	9	9	9	9	9	9	9	9	9	9	9	9
1870–1880	26	15	15	15	15	15	15	15	15	15	15	15	15
1880–1890	22	14	14	13	13	13	12	12	13	11	11	11	11
1890–1900	43	30	29	29	28	28	28	28	28	27	27	27	26
1900–1910	39	33	32	32	32	30	29	28	28	26	26	26	26
1910–1911	6	--	6	6	6	6	5	5	5	4	4	5	4
1911–1912	5	--	--	5	4	4	3	3	3	3	3	3	3
1912–1913	10	--	--	--	10	8	8	8	8	8	8	8	7
1913–1914	5	--	--	--	--	5	5	5	5	5	5	5	5
1914–1915	2	--	--	--	--	--	2	2	2	2	2	2	2
1915–1916	2	--	--	--	--	--	--	2	1	1	1	1	1
1916–1917	1	--	--	--	--	--	--	--	1	1	1	1	1
1917–1918	1	--	--	--	--	--	--	--	--	1	1	1	0
1918–1919	0	--	--	--	--	--	--	--	--	--	0	0	0
1919–1920	7	--	--	--	--	--	--	--	--	--	--	7	7
1920–1921	1	--	--	--	--	--	--	--	--	--	--	--	1
Total	211	124	128	132	139	140	138	139	140	135	135	143	142

TABLE 7. LAW SCHOOLS CLASSIFIED BY TYPE OF ORGANIZATION

a. By decades from the beginning

	1790	*1800*	*1810*	*1820*	*1830*	*1840*	*1850*	*1860*	*1870*	*1880*	*1890*	*1900*	*1910*	*1917*
Avowedly independent	0	0	0	0	0	0	0	0	0	0	0	9	16	26
Sole department operating under broad charter	0	0	0	0	0	0	1	2	2	2	1	0	1	3
Aggregation of professional schools	0	0	0	0	1	0	1	1	1	2	5	5	7	4
Expanded normal school	0	0	0	0	0	0	0	0	0	1	5	8	5	5
Connected with Y. M. C. A. or similar organization	0	0	0	0	0	0	0	0	0	0	0	1	3	5
Offshoot of a correspondence school	0	0	0	0	0	0	0	0	0	0	0	1	4	3
Offshoot of a business school	0	0	0	0	0	0	0	0	0	0	0	0	1	2
Total non-collegiate	0	0	0	0	1	0	2	3	3	5	11	24	37	48
State or federal university	0	0	0	0	1	1	5	7	10	14	19	26	34	36
Roman Catholic college or university	0	0	0	0	0	0	0	0	1	2	2	3	9	16
Protestant or non-sectarian college or university	1	2	2	3	4	6	8	11	17	30	29	49	44	40
Total	1	2	2	3	6	7	15	21	31	51	61	102	124	140

b. By years since 1909–10

	1910	*1911*	*1912*	*1913*	*1914*	*1915*	*1916*	*1917*	*1918*	*1919*	*1920*	*1921*
Avowedly independent	16	18	20	22	24	25	25	26	24	24	26	26
Sole department operating under broad charter	1	2	2	2	3	3	3	3	3	2	2	2
Aggregation of professional schools	7	7	6	6	4	4	4	4	4	4	4	4
Expanded normal school	5	5	5	5	5	5	5	5	4	4	4	4
Connected with Y. M. C. A. or similar organization	3	4	4	4	4	4	5	5	5	5	9	10
Offshoot of a correspondence school	4	5	5	6	4	3	3	3	1	1	1	0
Offshoot of a business school	1	1	1	2	3	3	2	2	2	2	2	2
Total non-collegiate	37	42	43	47	47	47	47	48	43	42	48	48
State or federal university	34	35	36	36	37	37	36	36	36	36	36	35
Roman Catholic college or university	9	9	10	15	15	16	16	16	16	16	16	16
Protestant or non-sectarian college or university	44	42	43	41	41	38	40	40	40	41	43	43
Total	124	128	132	139	140	138	139	140	135	135	143	142

TABLE 8. LAW SCHOOLS CLASSIFIED BY STATES

a. By decades from the beginning

	1790	*1800*	*1810*	*1820*	*1830*	*1840*	*1850*	*1860*	*1870*	*1880*	*1890*	*1900*	*1910*	*1917*
Alabama	--	--	--	0	0	0	0	0	0	2	1	1	1	1
Arizona	--	--	--	--	--	--	--	--	--	--	--	--	--	1
Arkansas	--	--	--	--	--	0	0	0	0	0	1	1	1	1
California	--	--	--	--	--	--	--	0	0	1	1	3	5	10
Colorado	--	--	--	--	--	--	--	--	--	0	0	2	2	3
Connecticut	0	0	0	0	1	1	1	1	1	1	1	1	1	1
Delaware	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District of Columbia	--	0	0	0	0	0	0	0	2	4	4	6	8	8
Florida	--	--	--	--	--	--	0	0	0	0	0	0	2	2
Georgia	0	0	0	0	0	0	1	1	1	2	3	4	3	4
Idaho	--	--	--	--	--	--	--	--	--	--	--	0	1	1
Illinois	--	--	--	0	0	0	0	1	2	3	6	12	9	12
Indiana	--	--	--	0	0	0	1	2	2	2	5	7	10	8
Iowa	--	--	--	--	--	--	0	0	1	3	2	3	2	2
Kansas	--	--	--	--	--	--	--	--	0	1	2	2	2	2
Kentucky	--	1	1	1	1	1	2	2	2	2	1	3	5	3
Louisiana	--	--	--	0	0	0	1	1	1	2	1	1	2	3
Maine	--	--	--	0	0	0	0	0	0	0	0	1	1	1
Maryland	0	0	0	0	1	0	0	0	0	1	2	2	3	1
Massachusetts	0	0	0	1	1	1	1	1	1	2	2	2	3	4
Michigan	--	--	--	--	--	0	0	1	1	1	1	2	2	3
Minnesota	--	--	--	--	--	--	--	0	0	0	1	2	2	4
Mississippi	--	--	--	0	0	0	0	1	1	2	1	2	2	2
Missouri	--	--	--	--	0	0	0	0	1	2	2	4	5	6
Montana	--	--	--	--	--	--	--	--	--	--	0	0	0	1
Nebraska	--	--	--	--	--	--	--	--	0	0	0	1	2	3
Nevada	--	--	--	--	--	--	--	--	0	0	0	0	0	0
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New Jersey	0	0	0	0	0	0	1	0	0	0	0	0	1	1
New Mexico	--	--	--	--	--	--	--	--	--	--	--	--	--	0
New York	0	0	0	0	0	0	0	4	5	4	5	7	9	9
North Carolina	0	0	0	0	0	0	1	1	1	3	2	3	4	4
North Dakota	--	--	--	--	--	--	--	--	--	--	0	0	1	1
Ohio	--	--	0	0	0	1	1	1	1	2	3	6	8	9
Oklahoma	--	--	--	--	--	--	--	--	--	--	--	--	2	1
Oregon	--	--	--	--	--	--	--	0	0	0	2	2	4	4
Pennsylvania	0	0	0	0	0	1	2	1	2	4	1	4	4	5
Rhode Island	0	0	0	0	0	0	0	0	0	0	0	0	0	0
South Carolina	0	0	0	0	0	0	0	0	1	0	2	1	1	1
South Dakota	--	--	--	--	--	--	--	--	--	--	0	0	1	1
Tennessee	--	0	0	0	0	0	1	1	1	2	4	9	7	6
Texas	--	--	--	--	--	--	0	0	1	0	1	2	1	1
Utah	--	--	--	--	--	--	--	--	--	--	--	0	0	1
Vermont	--	0	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	1	1	1	1	2	2	2	2	2	3	2	3	3	3
Washington	--	--	--	--	--	--	--	--	--	--	0	1	1	3
West Virginia	--	--	--	--	--	--	--	--	0	1	1	1	1	1
Wisconsin	--	--	--	--	--	--	0	0	1	1	1	1	2	2
Wyoming	--	--	--	--	--	--	--	--	--	--	--	0	0	0
Total schools	1	2	2	3	6	7	15	21	31	51	61	102	124	140
States with schools[1]	1	2	2	3	5	6	12	15	21	24	29	33	39	42
States without schools[1]	12	15	16	21	20	21	19	19	17	15	14	13	8	7
Organized territories	2	2	6	3	3	3	2	5	9	8	6	3	2	0
Total jurisdictions	15	19	24	27	28	30	33	39	47	47	49	49	49	49

[1] Including the District of Columbia.

b. By years since 1909–10

	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921
Alabama	1	1	1	1	1	1	1	1	1	1	1	1
Arizona	--	--	0	0	0	0	1	1	1	1	1	1
Arkansas	1	1	1	1	1	1	1	1	1	1	1	1
California	5	7	8	9	10	10	10	10	9	9	10	10
Colorado	2	2	2	2	3	3	3	3	3	3	3	3
Connecticut	1	1	1	1	1	1	1	1	1	1	1	1
Delaware	0	0	0	0	0	0	0	0	0	0	0	0
District of Columbia	8	8	8	8	8	8	8	8	6	6	7	7
Florida	2	2	2	2	2	2	2	2	2	2	2	2
Georgia	3	3	3	3	3	3	3	4	4	4	4	4
Idaho	1	1	1	1	1	1	1	1	1	1	1	1
Illinois	9	10	11	12	12	12	13	12	12	12	12	11
Indiana	10	10	11	11	10	8	8	8	6	6	6	6
Iowa	2	2	2	2	2	2	2	2	2	2	2	2
Kansas	2	2	2	2	2	2	2	2	2	2	2	2
Kentucky	5	6	6	4	4	3	3	3	3	3	4	4
Louisiana	2	2	2	2	2	3	3	3	3	3	3	3
Maine	1	1	1	1	1	1	1	1	1	1	1	0
Maryland	3	3	2	2	1	1	1	1	1	1	1	1
Massachusetts	3	3	3	3	3	4	4	4	4	4	7	7
Michigan	2	2	2	3	3	3	3	3	3	3	3	3
Minnesota	2	2	2	4	4	4	4	4	4	4	4	4
Mississippi	2	2	2	2	2	2	2	2	2	2	1	1
Missouri	5	5	5	6	6	6	6	6	6	6	6	6
Montana	0	0	1	1	1	1	1	1	1	1	1	1
Nebraska	2	3	3	3	3	3	3	3	3	3	3	3
Nevada	0	0	0	0	0	0	0	0	0	0	0	0
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0
New Jersey	1	1	1	1	1	1	1	1	1	1	1	1
New Mexico	--	--	0	0	0	0	0	0	0	0	0	0
New York	9	9	9	9	9	9	9	9	9	9	9	9
North Carolina	4	4	4	4	5	4	4	4	4	4	4	4
North Dakota	1	1	1	2	1	1	1	1	1	1	1	1
Ohio	8	8	8	8	8	8	8	9	9	9	10	10
Oklahoma	2	1	1	1	1	1	1	1	1	1	1	1
Oregon	4	4	4	4	5	5	4	4	4	4	4	4
Pennsylvania	4	4	4	5	5	5	5	5	5	5	5	5
Rhode Island	0	0	0	0	0	0	0	0	0	0	0	1
South Carolina	1	1	1	1	1	1	1	1	1	1	1	1
South Dakota	1	1	1	1	1	1	1	1	1	1	1	1
Tennessee	7	6	7	6	6	6	6	6	5	5	7	7
Texas	1	1	1	1	1	1	1	1	2	2	2	2
Utah	0	1	1	1	1	1	1	1	1	1	1	1
Vermont	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	3	3	3	3	3	3	3	3	3	3	3	4
Washington	1	1	1	3	3	3	3	3	3	3	3	2
West Virginia	1	1	1	1	1	1	1	1	1	1	1	1
Wisconsin	2	2	2	2	2	2	2	2	2	2	2	2
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0
Total schools	124	128	132	139	140	138	139	140	135	135	143	142
States with schools [1]	39	40	41	41	41	41	42	42	42	42	42	42
States without schools [1]	8	7	8	8	8	8	7	7	7	7	7	7
Organized territories	2	2	0	0	0	0	0	0	0	0	0	0
Total jurisdictions	49	49	49	49	49	49	49	49	49	49	49	49

[1] Including the District of Columbia.

TABLE 9. LAW SCHOOLS CLASSIFIED BY AMOUNT OF TIME REQUIRED FOR THE LOWEST DEGREE

For explanation of symbols, see above, page 441. Two institutions with high entrance requirements, holding sessions during early afternoon hours, have been listed as A but classified as full-time schools. In a few cases it has been impossible to ascertain for the earlier years whether "day" schools held sessions during morning or afternoon hours; these doubtful cases have been listed and classified as full-time schools. Slight discrepancies between these figures and those quoted on pages 393, 414 and 441 are due to the fact that the present table counts college work required for the law degree but not required for admission to the law school as candidate for the degree; there were three such cases in 1916–17, and two in 1920–21.

High-entrance full-time schools

	1889–90	1899–1900	1909–10	1916–17	1920–21
*IIIM3	0	1	1	2	2
*IIIM3 or IIIM4	0	0	0	0	1
IIIM3	0	1	4	5	4
IIIA3	0	0	0	0	1
IIIM3 or IIM4	0	0	0	0	1
IIM3	0	0	4	16	22
IIA3	0 0	0 2	1 10	1 24	0 31

Low-entrance schools offering full-time courses of standard length

	1889–90	1899–1900	1909–10	1916–17	1920–21
IM3	0	0	4	14	17
M3	6	24	30	16	15
IIM3 E4	0	0	0	2	0
IM3 IE5	0	0	0	0	1
IM3 E4	0	0	1	2	2
IM3 A3	0	0	0	1	6
M3 A3 E5	0	0	0	1	0
M3 E4	0	0	3	3	2
M3 A3	0	0	1	0	1
M3 E3	0	2	4	2	0
M3 A3 E3	0 6	0 26	0 43	2 43	2 40

Part-time schools offering courses of standard length

	1889–90	1899–1900	1909–10	1916–17	1920–21
IIE4	0	0	0	0	1
IIE3	0	0	0	2	1
IA3	0	0	0	1	2
E4	0	1	3	11	16
A4 E4	0	0	0	0	3
A3 E4	0	0	0	0	1
A3	1	7	7	6	7
E3	0	11	20	21	14
A3 E3	0 1	0 19	1 31	9 50	10 55

Short-course schools

	1889–90	*1899–1900*	*1909–10*	*1916–17*	*1920–21*
IIM2	1	2	2	1	0
M2	29	29	18	8	5
M1½	1	0	0	0	0
M1	4	6	1	1	1
M2 E4	0	1	0	0	0
M2 A2 E3	0	0	1	0	0
M2 E2	1	0	0	0	0
M2 A2 E2	0	1	1	0	0
A2 E3	0	1	0	0	0
A2	7	7	6	4	1
E2	7	7	8	9	9
A2 E2	0	0	2	0	0
A1	2	0	0	0	0
E1	2 64	1 55	1 40	0 23	0 16
Total	61	102	124	140	142

TABLE 10. LAW SCHOOL STUDENTS CLASSIFIED BY AMOUNT OF TIME REQUIRED FOR THE LOWEST DEGREE

The figures are as reported to the U. S. Commissioner of Education. No reports were received by him from eight out of sixty-one schools in 1889–90, and from twenty out of one hundred and thirty-nine schools in 1915–16. The missing institutions were for the most part small part-time or short-course schools. The discrepancy between these totals and those shown in Tables 1 and 4 is due to erroneous addition by the Commissioner, and to the fact that his totals include a number of students taking only correspondence work and of students in schools situated in outlying possessions or not conferring degrees.

High-entrance full-time schools

	1889–1890		*1915–1916*	
*IIIM3	0		1,046	
IIIM3	0		1,344	
IIM3	0	0	2,388	4,778

Low-entrance schools offering full-time courses of standard length

	1889–1890		*1915–1916*	
IM3	0		2,336	
M3	1,192		2,077	
IIM3 E4	0		349	
IM3 E4	0		167	
M3 A3 E5	0		619	
M3 E4	0		455	
M3 A3	0		425	
M3 E3	0		182	
M3 A3 E3	0	1,192	1,308	7,918

Part-time schools offering courses of standard length

	1889–1890		*1915–1916*	
IIE3	0		109	
IA3	0		78	
E4	0		1,619	
A3	108		368	
E3	0		3,206	
A3 E3	0	108	2,084	7,464

Short-course Schools

	1889–1890		*1915–1916*	
IIM2	35		134	
M2	1,977		1,010	
M1½	10		0	
M1	111		190	
M2 E2	134		6	
A2	467		64	
E2	379		636	
A1	49		0	
E1	24	3,186	0	2,043
Total		4,486		22,203

TABLES 11, 12 AND 13. ATTENDANCE FIGURES AT INDIVIDUAL LAW SCHOOLS

Figures prior to 1870 are given on the authority of institutional histories or of school catalogues, etc., accessible in New York City, or, in a few cases, have been supplied by school or university officials. Figures published in the *American Almanac* between 1831 and 1861 have been found, after comparison, to be worthless. As illustrating the character of the data that have to be used, the Harvard *Catalogue* for 1839–40 shows 86 students; the Dean's Report for that year, as quoted by Warren, shows that the attendance varied during the year between 76 and 99, and that the total number of students spending any time in the school was 166. One edition of the 1859–60 *Catalogue* lists 167 students, totaled as 166; another edition 146. Other sources of information also exist for Harvard; for other schools the figures are less confusingly abundant, and probably also less reliable. It is believed that a more exhaustive search for data would not yield results commensurate with the labor involved. Even to-day there is nothing resembling a scientific treatment of student statistics in any American university.

TABLE 11. COMPETITION FOR STUDENTS AMONG LAW SCHOOLS PRIOR TO 1840

This table, starting with the first year of the Harvard law school, shows the effect of competition by universities maintaining schools that appealed to more than a single constituency. The Transylvania figures are as given in histories of the university. The remaining figures are as given in the catalogues, except those of Harvard prior to 1826, for which the *Harvard Law Quinquennial* has been followed. For earlier law school attendance figures see Chapters X–XIII.

	Litchfield	*Harvard*	*Yale*	*Virginia*	*Transylvania*
1817-1818	43	5	--	--	...
1818-1819	34	9	--	--	...
1819-1820	18	19	--	--	...
1820-1821	26	12	--	--	9
1821-1822	26	10	--	--	49
1822-1823	23	9	--	--	44
1823-1824	44	7	--	--	48
1824-1825	23	12	13	--	...
1825-1826	24	12	16	26	...
1826-1827	32	8	10	18	...
1827-1828	19	8	20	24	...
1828-1829	18	6	20	27	...
1829-1830	16	24	21	23	24
1830-1831	14	31	33	16	...
1831-1832	9	40	44	29	...
1832-1833	11	38	31	37	...
1833-1834	6	51	39	48	...
1834-1835	--	32	45	33	36
1835-1836	--	52	31	67	...
1836-1837	--	50	31	55	...
1837-1838	--	63	33	67	...
1838-1839	--	78	32	54	...
1839-1840	--	86	45	71	71

TABLE 12. ATTENDANCE AT INDIVIDUAL LAW SCHOOLS PRIOR TO THE CIVIL WAR

The figures are taken from institutional histories or catalogues. In the case of Harvard, those figures have been used which seem most nearly comparable with those of other schools. Private schools not conferring degrees are excluded. For detailed study of law school attendance during the Civil War decade, see 12 *Annual Report, Carnegie Foundation* (1917), 119–123.

1779–1780	
William and Mary	40

1789–1790	
William and Mary	...
Transylvania	...

1799–1800	
William and Mary	...
Transylvania	19

1809–1810	
William and Mary	...
Transylvania	...

1819–1820	
Harvard	19
Transylvania [1]	...
William and Mary	...

1829–1830	
Harvard	24
Transylvania	24
Virginia	23
Yale	21
William and Mary	...
Maryland	...

1839–1840	
Harvard	86
Transylvania	71
Virginia	71
Yale	45
Cincinnati [2]	...
William and Mary	30
Dickinson [3]	...

1849–1850	
Harvard	94
Virginia	66
Louisiana [4]	...
Yale	33
Cincinnati [5]	...
Louisville [6]	...
Cumberland [7]	...
Indiana [8]	...
Princeton [9]	...
Lafayette	0
Transylvania	...
William and Mary	...
Dickinson [10]	...
Georgia	...
North Carolina	...

1859–1860	
Cumberland	180
Harvard	166
Virginia	131
Albany [11]	...
Michigan	90
Cincinnati [12]	...
Pennsylvania	71
New York University	67
Columbia	62
Louisville [13]	...
Louisiana [14]	...
Mississippi	29
Yale	28
Georgia	26
Chicago [15]	...
De Pauw [16]	...
Indiana [17]	...
Transylvania	...
William and Mary	...
North Carolina	...
Hamilton [18]	...

[1] In 1820–21, 9.
[2] Graduates (one-year course), 32.
[3] Graduates, 13.
[4] Graduates (two-year course), 25.
[5] Graduates (one-year course), 16.
[6] Graduates, 15.
[7] Graduates (two-year course), 12.
[8] Graduates (one-year course), 12.
[9] Graduates (two-year course), 0.
[10] Graduates, 0.
[11] Graduates (one-year course), 105.
[12] Graduates (one-year course), 76.
[13] Graduates, 36.
[14] Graduates (two-year course), 30.
[15] Graduates (one-year course), 11.
[16] Graduates (one-year course), 8.
[17] Graduates (one-year course), 0.
[18] Graduates (one-year course), 0.

TABLE 13. ATTENDANCE AT SIX LARGEST LAW SCHOOLS SINCE THE CIVIL WAR

The figures in general are those of the U. S. Commissioner of Education and are the latest available. Because of the uncertainty, however, as to the year to which his earliest figures refer (see below, page 463), the Michigan, Columbia and Harvard figures of 1869–70 are as given in the catalogues. So for all six schools for 1919–20. For additional intermediate figures, see Chapter XVIII, section 2.

1869–1870	
Michigan	308
Columbia	230
George Washington	166
Harvard	120
Albany	110
Virginia	109

1879–1880	
Columbia	456
Michigan	371
Hastings	181
Harvard	156
Boston	151
George Washington	141

1889–1890	
Columbia	456
Michigan	405
Harvard	265
Georgetown	217
George Washington	210
Boston	180

1899–1900	
Michigan	883
New York Law School	775
New York University	684
Harvard	616
Minnesota	528
Boston	409

1909–1910	
Michigan	883
Harvard	766
New York Law School	749
New York University	732
Georgetown	614
Chicago Kent	554

1910–1911	
Harvard	810
Michigan	792
New York Law School	751
Georgetown	717
New York University	679
Chicago Kent	591

1911–1912	
Georgetown	924
Harvard	809
Michigan	798
New York Law School	705
New York University	649
Chicago Kent	627

1912–1913	
Georgetown	1008
Chicago Kent	804
Michigan	779
Harvard	745
New York University	649
New York Law School	554

1913–1914	
Georgetown	1605
Chicago Kent	786
Harvard	694
New York University	678
Michigan	612
Southern California	605

1914–1915	
Georgetown	998
Chicago Kent	751
Harvard	730
Michigan	679
New York University	676
Southern California	630

1915–1916	
Georgetown	1001
Harvard	791
New York University	705
Chicago Kent	646
Southern California	619
New York Law School	603

1919–1920	
Georgetown	1052
New York University	979
Harvard	883
George Washington	752
Fordham	687
Suffolk	591

§ III. EARLY LAW SCHOOL CURRICULA

The working classifications devised by early law schools were of two main types, according as a narrowly technical or an ambitiously broad field of study was contemplated.

The Litchfield school illustrates the narrow type.[1] The manuscript notes of lectures indicate that as early as 1794 Reeve had organized the curriculum of his one-year school under ten main divisions, increased after the advent of Gould to thirteen. The first two columns of the following table show the development of this curriculum in twenty years. The divisions are listed in the order in which they, or their constituent topics, appear in the Baldwin manuscript of 1813. The Hartford manuscript of 1794 shows the same order except that Evidence there appears after Pleading, and Equity after Contracts. The two Yale manuscripts, representing intermediate years, maintain the same order for the first three divisions, but thereafter exhibit considerable variations. The figures denote the number of manuscript pages occupied by each division.

The last two columns of the table show, for purpose of comparison, the first Story-Greenleaf curriculum at Harvard, as distributed between the two professors, and Dwight's Columbia curriculum, as taught by himself to both first-year and second-year students.

	Litchfield 1794	*Litchfield 1813*	*Harvard 1835–38*	*Columbia 1858–75*
Introductory	16	50	Greenleaf	First year
Domestic Relations	95	194	....	....
Executors and Administrators	76	69	....	....
Sheriffs and Gaolers	0	41	....	....
Contracts with its actions	176	378	Greenleaf[2]	First year
Torts	50	74	....	Second year
Evidence	33	72	Greenleaf	Second year
Pleading	59	281	Greenleaf	Second year
Practice	0	68	....	Second year
The Law Merchant[3]	39	266	Story	Second year
Equity	26	51	Story	Second year
Criminal Law	0	64	....	Second year[4]
Real property with its actions	126	364	Greenleaf	First year
Corporations	0	0	Greenleaf	....
Constitutional Law	0	0	Greenleaf	....
Conflict of Laws	0	0	Story	....
	696 pp. 12mo.	1972 pp. folio	14 yr. hrs.	15 yr. hrs.

[1] For the curriculum of the William and Mary school, see page 116.

[2] Story also gave a course in Sales.

[3] In the three earliest Litchfield manuscripts this branch of the law is described successively as "Law Merchant," "Lex Mercatoria" and "Mercantile Law;" the published analysis of the latest manuscript shows, instead, Bills and Notes, Insurance, and six minor topics treated successively. Story taught six distinct topics, grouped together, to conform to language used by Dane in establishing the professorship, under the general head of "Commercial and Maritime Law." Dwight used the term "Commercial Law."

[4] In the later years of the Dwight school Criminal Law, not being included in the list of topics prescribed by the Supreme Court, was omitted.

The subject-matter included under the preceding titles was not, of course, uniform. Several of the topics not specifically mentioned at Harvard, for instance, were doubtless covered in the introductory course on Blackstone and Kent. Bailments, which at Litchfield was taken up in connection with Contracts, was regarded by Story, under Hoffman's influence, as part of the Law Merchant. Sales was taught at Harvard separately from both Contracts and the Law Merchant. By combining the titles into larger groups it is possible to eliminate this source of confusion and, comparing the number of pages devoted to these groups in Blackstone's text and in the Litchfield manuscripts, and the approximate number of year-hours devoted to instruction in these subjects in the early Story school, to indicate with considerable accuracy their relative importance. The percentage figures secured by this method bring out strikingly the development of commercial law (using this term in a broad sense to include Contracts, Sales, and Corporations as well as the various divisions of the Law Merchant) and of Equity at the expense of Criminal Law and of Real Property.

	Blackstone 1765–1769	*Litchfield* 1794	*Litchfield* 1813	*Harvard* 1835–1838
The Law Merchant, Contracts, etc.	2%	31%	38%	40%
Equity	2	4	3	14
Pleading, Practice and Evidence	13	13	21	14
Criminal Law	21	0	3	0
Real Property	25	18	13	7
Other branches and introductory	37	34	22	25
	100%	100%	100%	100%

David Hoffman, in his *Course of Legal Study*, published in 1817, painted his large canvas with a broader stroke. He was interested not in minutely subdividing a narrowly technical field, but in listing as many textbooks as possible among less carefully analyzed groups. His fourth division, for instance, entitled the "Law of Personal Rights and Remedies," covered not merely the Law of Persons, as that term is commonly employed to-day (the law of family relationships, etc.), but also all branches of the technical law that he could not fit in anywhere else, including subjects so diverse as Contracts, Pleading and Evidence. The title of this division was suggested by the first of Blackstone's four major divisions, "Rights of Persons," but its content was decidedly different. It excluded topics treated by Blackstone under this head, notably that of governmental organization, and included other topics discussed elsewhere by Blackstone. In the second edition of his *Course of Legal Study* (1836) Hoffman omitted the Constitution and Laws of the Several States, but added a long list of "Auxiliary Subjects," including Eloquence and Oratory, Codification and Proposed Amendments of Law ("law reform"), Military and Naval Law, Logic and Professional Deportment (legal ethics).

Both the University of Virginia and Harvard were influenced by Hoffman's classification. At Virginia the only change, other than a

change of order, in the curriculum as originally established was a throwing together of four of Hoffman's thirteen divisions under the general head of "Common and Statute Law."[1] Story, although he organized his Harvard curriculum for teaching purposes along the more analytical lines determined by existing texts, printed also a bibliography classified very much as under Hoffman's scheme. Story entitled Hoffman's miscellaneous division at first "Personalty," but after 1832, "Personal Property." This list of recommended texts, perpetuating an unhappily illogical scheme of classification, continued to be printed in the Harvard catalogues until 1869, and because of the custom of exchanging catalogues between school and school undoubtedly spread confusion throughout the country.

The table on the following page shows, in the first three columns, how closely, except in the matter of sequence, Virginia and Harvard followed Hoffman's scheme. The last column shows the major divisions that were represented by texts actually used in the Harvard two-year course. The miscellaneous "Personal Property" division was represented, in 1832, by texts on Contracts, Sales, Pleading, and Evidence; in 1834 Corporations and Conflict of Laws were added. "Commercial and Maritime Law" included texts on Shipping, Bills, Agency, Insurance, Bailments and Partnership.

For other early working classifications of the field of law or the law school curriculum, see Blackstone; Zephaniah Swift's *System of the Laws of the State of Connecticut*, 1795; Kent's *Dissertations*, 1795, and *Commentaries*, 1826–30; Story's *Conflict of Laws*, 1834, chap. iii; Butler's *Plan for the Organization of a Law Faculty in the University of the City of New York*, 1835; Francis Hilliard's *Elements of Law*, first edition, 1835; Timothy Walker's *Introduction to American Law*, 1837.

[1] "In the School of Law shall be taught the common and statute law, that of the Chancery, the laws Feudal, Civil, Mercatorial, Maritime, and of Nature and Nations; and also the principles of Government and Political Economy." *Enactments by the Rector and Visitors of the University of Virginia*, 1825.

In 1851 the two professors bore the titles of Professor of Common and Statute Law, and Professor of Constitutional and International Law, Equity, Evidence and the Law Merchant. So as late as 1891.

Hoffman 1817	*Virginia* 1825	*Harvard list of texts,* 1830–1869	*Harvard two-year course,* 1832–1869
I Moral and Political Philosophy	Law of Nature		----------------
II Elementary and Constitutional Principles of the Municipal Law		I Blackstone,	
		Kent, Hale,	
I Feudal Law	Feudal Law	Hoffman, etc.	----------------
II Institutes of Municipal Law			Blackstone and Kent
	Common and		
III Law of Real Rights and Remedies	Statute Law	IV Real Property	Real Property
IV Law of Personal Rights and Remedies		II Personal Property	Personal Property
VII Law of Crimes and Punishments		VI Criminal Law	----------------
VI Lex Mercatoria	Mercatorial Law	III Commercial and	Commercial and
IX Maritime and Admiralty Law	Maritime Law	Maritime Law	Maritime Law
V Equity	Law of Chancery	V Equity	Equity
		IX Constitutional Law	Constitutional Law
XI Constitution and Laws of the U. S.	Government	Federal	Federal
XII Constitution and Laws of the States		State	----------------
VIII Law of Nations	Law of Nations	VIII Law of Nations	----------------
X Civil or Roman Law	Civil Law	VII Civil Law	----------------
XIII Political Economy	Political Economy	----------------	----------------

§ IV. TABLES ILLUSTRATING MECHANISTIC DEVELOPMENT AT HARVARD

A. YEAR-HOURS OF INSTRUCTION ANNOUNCED, ACTUALLY GIVEN, AND REQUIRED FOR THE DEGREE

Moot court work, work duplicated in class sections, optional work offered since the introduction of the elective system in 1875 and not counted toward the degree, and postgraduate work are omitted. Of optional work there was given in 1899–1900 one year-hour, in 1909–10 approximately three year-hours, and in 1916–17 approximately four year-hours. Of postgraduate work there was given in 1916–17 a little over twelve year-hours, in Jurisprudence, etc.

	1835–36	*1839–40*	*1841–43*	*1859–60*	*1879–80*	*1889–90*	*1899–1900*	*1909–10*	*1916–17*
Total amount of instruction offered in the entire curriculum as announced	14	15	19½	18	29	36	54	49	52
Amount actually given during the current year[1]	10	12	15	10	29	35½	50	47	52
Amount required to be mastered in order to secure the LL.B. degree	0	0	0	0	24	27	30	32	36

B. YEAR-HOURS OF INSTRUCTION ALLOTTED TO SEPARATE SUBJECTS

The first line of the table on the following page shows the size of the standard teaching compartment, measured in year-hours, at selected dates, irrespective of what may be termed its dimensions (compare Chapter XXX, section 4). That is to say, three hours weekly for a third of a year, two hours weekly for half a year, and one hour weekly for an entire year are all treated as identical: one year-hour.

The body of the table shows how two or more standard titles of the law were at first freely combined, to be taught successively in a single teaching compartment, and how the principle of assigning a single legal title to a single compartment came later to prevail. In the few instances where the number of year-hours allotted to a subject is shown to be too large to be included within a standard compartment, this may mean either that a larger compartment was constructed (so for Contracts and at one time for Torts), or that more than one compartment was assigned to the subject (so more usually). Subjects not dated constituted Story's standard curriculum in force from as early as 1835; other subjects first appeared in the curriculum at the dates noted. The equivalence assumed to exist between subjects is, of course, not exact, but is believed to be as close an approximation to the facts as can be expressed in diagrammatic form. The total amount of instruction shown at the bottom of the table corresponds with the first line of Table A, except that postgraduate work is included.

[1] For table showing distribution of these year-hours among the teachers at selected dates between 1835–36 and 1912–13, see page 363, note. For table showing the division of the classroom work into teaching compartments, composed of a certain number of hours weekly during a certain portion of the year, at selected dates between 1835–36 and 1916–17, see page 368, note.

	1835–36	*1841–42*	*1859–60*	*1879–80*	*1889–90*	*1916–17*
Standard instructional unit	1	1½	½ to 1	1 to 2	2	2
Blackstone and Kent	2	3	2	--	--	--
Property	1	1½	4	4	4	6
Equity	2	3	1+	3	4	4
Contracts	[1]	} 1½	[3]	3	3	3
Bailments	[2]	}	} ½	[4]	--	[4]
Corporations	[1]	}	}	} 2	} 2	2
Partnership	} 1	} 1½	½	}	}	2
Agency	}	}	½	} 1	2	2
Shipping (1876, Carriers)	[2]	} 1½	½	}	--	2
Constitutional Law	[5]	}	} 2-	½	2	2
Pleading	[1]	} 1½	}	1	1	2
Evidence	[5]	}	[3]	2	2	2
Insurance	1	} 1½	[3]	--	--	2
Sales	1	}	} 1	2	2	2
Conflicts	1	} 1½	}	½	½	2
Bills (and, 1844, Notes)	1	}	1	2	2	2
Criminal Law (1848)	--	--	} 1	1	1	1½
Wills (1848)	--	--	}	1	[6]	[6]
Arbitration (1848)	--	--	1	--	--	--
Domestic Relations (1848)	--	--	} 1	--	1	1
Bankruptcy (1852)	--	--	}	--	--	1
Torts (1870)	--	--	--	3	2	3½
Jurisprudence, etc. (1872)	--	--	--	1	½	12+
Federal Procedure (1872)	--	--	--	--	1	1
Trusts (1874)	--	--	--	} 2	2	2
Mortgage (1876)	--	--	--	}	} 2	} 2
Suretyship (1882)	--	--	--	--	}	}
Quasi-Contracts (1886)	--	--	--	--	2	1
Damages (1890)	--	--	--	--	--	1
Admiralty (1900)	[7]	[7]	[7]	[7]	--	1
Municipal Corporations (1908)	--	--	--	--	--	1
Restraint of Trade (1916)	--	--	--	--	--	1
Total instruction offered	14	16½[8]	18	29	36	64+

[1] Pleading (Chitty), 1 year-hour; Pleading (Stephen), Contracts and Corporations, 1 year-hour.
[2] Shipping and Bailments, 1 year-hour.
[3] Insurance, Evidence and Contracts, 2 year-hours.
[4] Superseded by Carriers. This latter subject in 1884 was dropped from the curriculum. It was restored as a separate course in 1886 for a single year, and in 1891 permanently. In 1902 it was announced as including Public Service Companies. In 1909 its title was changed to Public Service Companies, especially Common Carriers, and in 1915 to Public Utilities.
[5] Constitutional Law and Evidence, 1 year-hour.
[6] Incorporated into Property.
[7] See "Shipping," above.
[8] Plus about 3 year-hours in extra lectures necessary to complete subjects.

C. YEAR-HOURS OF INSTRUCTION OFFERED TO AND REQUIRED TO BE TAKEN BY EACH CLASS

The first column of this table shows the amount of first-year law work, always prescribed, since the accession of Langdell.

The next four columns show the amount of work offered to the upper classes, and the amount required to be taken for the LL.B. degree. Between 1871 and 1875 the work for this degree was entirely prescribed; the excess offerings for the second year were purely optional. In 1870–71, however, and since 1875, the student has been permitted to elect his own work from the total offerings as shown. The third-year student's field of choice includes, in addition to the work shown in column 4, all second-year work not already taken; since 1913–14 he has also been permitted to count two year-hours of postgraduate work toward his LL.B. For a time honor students were required to take during their third year additional year-hours as follows: 1878–79, two; 1879–82, three; 1882–83, one; 1883–98, two.

Columns 6 and 7 show the total amount of work offered and required to be taken by all three classes, and correspond with the last two lines of Table A. The last column shows how the excess of offerings over the LL.B. requirements has mounted, in spite of the relegation, since 1910, of part of the offerings to a postgraduate year, and in spite of greatly increased requirements for the lower degree.

	1	2	3	4	5	6	7	8
	FIRST YEAR	SECOND YEAR		THIRD YEAR		TOTAL		EXCESS
	Offrd. and req.	*Offrd.*	*Req.*	*Offrd.*	*Req.*	*Offrd.*	*Req.*	
1870–1871	9	10½	7½	--	--	19½	16½	3
1871–1872	8	9½	5	--	--	17½	13	4½
1872–1873	8	7+	5	--	--	15+	13	2+
1873–1874	6⅔	10⅓	6⅓	--	--	17	13	4
1874–1875	9+	11–	8⅓	--	--	20	18–	2+
1875–1876	10	16	10	--	--	26	20	6
1876–1877	10	15	10	--	--	25	20	5
1877–1878	10	17	10	--	--	27	20	7
1878–1879	10	12	8	6	6	28	24	4
1879–1880	10	12	8	7	6	29	24	5
1880–1881	10	12	8	7	6	29	24	5
1881–1882	10	12	8	7	6	29	24	5
1882–1883	9	12	10	10	8	31	27	4
1883–1884	9	12	10	10	8	31	27	4
1884–1885	9	12	10	10	8	31	27	4
1885–1886	9	12	10	11	8	32	27	5
1886–1887	9	14	10	13	8	36	27	9
1887–1888	9	14	10	12	8	35	27	8
1888–1889	9	14	10	12	8	35	27	8
1889–1890	9	14	10	12½	8	35½	27	8½
1899–1900	10	22	10	18	10	50	30	20
1909–1910	12	18	10	17	10	47	32	15
1916–1917	12	20	12	20	12	52	36	16

§ V. BIBLIOGRAPHY AND ACKNOWLEDGMENTS OF ASSISTANCE RENDERED

A. GENERAL ACKNOWLEDGMENTS

The cordial assistance rendered the writer both by his colleagues in the Carnegie Foundation and by law teachers throughout the country has far exceeded that measure of coöperation which may be expected among those pursuing common aims. The pleasant personal contacts formed in the process of visiting one hundred and thirty-three law schools have made possible an interchange of ideas, in conversation or by correspondence, which has been of as much value as has the actual information secured. Below are mentioned only those gentlemen to whom special acknowledgment is due for concrete assistance in connection with the present Bulletin. Those who have rendered aid to the study as a whole, often in even more important ways, would constitute a long list. It is hoped that the writer's failure to be more specific will not be interpreted as a lack of appreciation on his part of all that he owes to others.

Hon. Simeon E. Baldwin of New Haven, Connecticut, Professor Joseph H. Beale of the Harvard Law School, Professor Alvin C. Brightman of the law school of Western Reserve University, Professor W. C. Bronson of Brown University, Dean George Chase of the New York Law School, Mr. Robert S. Fletcher, Librarian of Amherst College, President John C. Futral of the University of Arkansas, Robert M. Hughes, Esq., of the Norfolk (Virginia) bar, Mrs. Margaret C. Klingelsmith, Librarian of the University of Pennsylvania Law School, Professor Charles E. Little of the George Peabody College for Teachers, President John H. MacCracken of Lafayette College, Dean Lucius P. McGehee of the School of Law of the University of North Carolina, Charles L. McKeehan, Esq., of the Philadelphia bar, President James H. Morgan of Dickinson College, Rev. W. H. Parks of Cleburne, Texas, Mr. John S. Patton, Librarian of the University of Virginia, Dr. M. W. Stryker, late President of Hamilton College, President John M. Thomas of Pennsylvania State College, Hon. Henry St. George Tucker of Lexington, Virginia, President Emeritus Lyon G. Tyler of the College of William and Mary, and Charles Alfred Weatherby, Esq., of East Hartford, Connecticut, have given information in regard to early law schools or bar admission rules that could have been secured in no other way. Reginald Heber Smith, Esq., of the Boston bar, has criticised the Bulletin in manuscript, and Professor Thomas Reed Powell of Columbia University has made numerous most helpful suggestions with respect to its style.

B. LAW SCHOOLS

The most important general source of information regarding law schools, outside of manuscript material in the possession of the Car-

negie Foundation, consists of annual college or school Catalogues, general Catalogues or Alumni Registers, Presidents' Reports, etc. Good collections of these may be found in the New York Public Library, and, for the years since 1905, in the offices of the Foundation.

Educational statistics appearing in the *American Almanac* between 1831 and 1861 have been examined and found too unreliable to be safely used. Statistics and other information contained in the annual *Reports of the United States Commissioner of Education* from 1870 to 1915–16, inclusive, have likewise been collected under conditions that greatly impair their usefulness. The institutions have been careless in filling out the Commissioner's blanks. The Commissioner's subordinates have been careless in transcribing the information and putting it through the press. Numerous changes in the classification of the data confuse the student. If used with caution, however, the Commissioner's *Reports* possess considerable value. For a partial guide to their contents, see below, pages 463–465.

As to information contained in the published Reports of associations since the Civil War, see likewise below, pages 466–468.

William G. Hammond's "American Law Schools, Past and Future," 7 *Southern Law Review*, N. S. (1881) 400–429, was the work of one who was called this year from the College of Law of the State University of Iowa to the St. Louis Law School of Washington University, and stamped him as the leading western authority on legal education. The first two volumes of the *Green Bag* (1889 and 1890) contain sketches of sixteen law schools; the more valuable of these are listed below. Information may also be found in William Draper Lewis' *Great American Lawyers*, 8 volumes, 1907–09, in the law journals maintained of late years by an increasing number of schools, and in the *American Law School Review*, published since 1902 by the West Publishing Company. There is no periodical occupying a position in legal education corresponding to that of the *Journal of the American Medical Association* in medicine, nor is there any collected information in regard to schools, past and present, similar to that contained in the *American Medical Directory*, or in *Davis on Medical Education*.

The following special histories have been consulted for schools started prior to 1892:

California: Slack, C. W., "Hastings College of the Law," 1 *Green Bag*, 518.

Connecticut: For the Litchfield law school, see page 132, note. For the Yale law school, see page 142, note.

District of Columbia: For the early law school maintained by Columbian College (George Washington University), see page 126, note 2.

Georgia: Morris, Sylvanus, *The University of Georgia Law Department.*

Illinois: Wilde, A. H., *Northwestern University, A History*, 1905; Babb, J. E., "Union College of Law, Chicago," 1 *Green Bag*, 330.

Iowa: McClain, Emlen, "Law Department of the State University of Iowa,"

1 *Green Bag*, 374; Van der Zee, Jacob, "Emlen McClain," 1 *Iowa Law Bulletin* (1915), 157.

Kentucky: For the Transylvania law school, see page 118, note 1.

Louisiana: Quintero, L. C., "The Law School of the Tulane University of Louisiana," 2 *Green Bag*, 116.

Maryland: For the University of Maryland law school, see page 126, note 1.

Massachusetts: For the Harvard law school, see page 147, note. Swasey, G. R., "Boston University Law School," 1 *Green Bag*, 54.

Michigan: Demmon, I. N., *History of the University of Michigan*, 1906; Rogers, H. W., "Law School of the University of Michigan," 1 *Green Bag*, 189.

Minnesota: Vance, W. R., "The Night Law School of the University of Minnesota," 3 *American Law School Review* (1913), 291–293.

Missouri: Allen, C. C., "The St. Louis Law School," 1 *Green Bag*, 283.

New Jersey: Maclean, John, *History of the College of New Jersey*, 1877.

New York: For the Columbia law school, see page 122, note. Butler, Benjamin F., *Plan for the Organization of a Law Faculty in the University of the City of New York*, 1835; Tompkins, Leslie J., *New York University Law School, Past and Present*, 1904; account of Dean Ashley's work in 4 *American Law School Review* (May–June, 1916), 175. Browne, Irving, "The Albany Law School," 2 *Green Bag*, 153; Parker and Fiero, *The Albany Law School*, 1912; Fiero, J. N., sketch of this school in 4 *American Law School Review* (Nov., 1915), 46; *Union University, Boards, Statement, Charter and Laws*, 1915. Hutchins, H. B., "The Cornell University School of Law," 1 *Green Bag*, 473; Woodruff, E. H., "History of the Cornell Law School," 4 *Cornell Law Quarterly* (1919), 91. Norton, C. P., "The Buffalo Law School," 1 *Green Bag*, 421.

North Carolina: Battle, Kemp P., *History of the University of North Carolina*, 1912.

Ohio: *University of Cincinnati Record*, June, 1908, "Celebration of the Seventy-fifth Anniversary of the Law School," *Ohio State University Bulletin*, 1906, "Addresses by Dean Hunter and Professor H. L. Wilgus."

Pennsylvania: For the University of Pennsylvania law school, see page 123, note. Himes, C. F., *Sketch of Dickinson College*, 1879. Owen, W. B., *Historical Sketches of Lafayette College*, 1876.

South Carolina: Green, E. L., *History of the University of South Carolina*, 1916.

Tennessee: Green, Nathan, "The Law School of Cumberland University," 2 *Green Bag*, 63.

Virginia: For the William and Mary law school, see page 117, note 1. For the University of Virginia law school, see page 119, note 3.

C. BAR ADMISSION RULES

The general statements made in the present Bulletin regarding the historical development and practical operation of bar admission systems in the country as a whole are based on detailed studies made for

each state and territorial jurisdiction separately. The voluminous authorities consulted, which include all original statutes and rules of court, past and present, contemporary reports of field workers, the report of a committee appointed by the Foundation to enquire into the types of questions asked by bar examiners, and a laboratory study of methods of examination marking, can be most conveniently cited in a subsequent Bulletin or Bulletins devoted more particularly to this phase of the subject.

The earliest comparative survey of bar admission requirements in the several states was made in 1881 by Francis L. Wellman, who had graduated from the Boston University law school three years previously. See his "Admission to the Bar," 15 *American Law Review* (1881), 295. As to information contained in the published Reports of Bar Association Proceedings, see below, pages 466–468.

D. INFORMATION IN REGARD TO LEGAL EDUCATION CONTAINED IN THE REPORTS OF THE UNITED STATES COMMISSIONER OF EDUCATION

Years covered

The figures given in the *Reports* for "1870" to "1881," inclusive, are assumed by the Commissioner, when used in subsequent comparisons, to refer to the academic years ending at these dates; the figures in the next published *Report*, that for 1882–83, are assumed to refer to the academic year 1881–82; figures for the academic year 1882–83 are assumed to have been omitted. These assumptions are made for the purpose of straightening out early confusion. Beginning with 1883–84, the academic years are more carefully distinguished and are published in *Reports* bearing a corresponding title. When only a single year is stated, the academic year ending that June is meant. The latest statistics published before the War with Germany, however, namely, those for 1914–15 and 1915–16, are found in the *Reports* for 1915–16 and 1916–17, respectively.

Statistics of individual law schools

Subject to the above qualifications, an attempt has been made to give information for every law school every year. The absence of a law school from the published list of any particular year does not, however, necessarily prove that the school did not then exist; nor does its presence necessarily indicate that it was then still in existence. The tabular heads are an outgrowth of the system employed by the *American Almanac* in its presentation of educational statistics between 1831 and 1861. Those that appear in the *Report* for 1916–17 had been developed by the Commissioner as follows:

Location. Stated regularly since 1870. The inconvenient alphabetical arrangement of institutions by states and by towns under each state is necessitated by the frequent changes in school names.

Name of institution. Regularly since 1870. Not always technically accurate.

Year of founding, chartering, organization or first opening. 1870–88; and since 1895. Most unreliable.

Head of school. Regularly since 1870. In place of the head of the department the president of the university is sometimes given.

Instruction given in day or evening. 1894; 1897–1905; and since 1907. The value of this information is impaired by the varying significance attached to the term "evening" in the North and in the South; and by failure to provide for schools that offer instruction only in the late afternoon or early morning, or that duplicate their work at different times of the day.

Number of instructors. Regularly since 1870; with many attempts, finally abandoned in 1914, to differentiate between types of instructors.

Number of students. Regularly since 1870; classified in various ways. The number of students holding college degrees was stated 1872–88 and since 1894; women students have been separated since 1893.

Number graduating during the year. Regularly since 1886.

Length of course. 1872; and since 1874. Number of weeks usually stated in addition to or in place of number of years until 1911. Information unsatisfactory, because of variable length of course in many institutions.

Tuition fee. 1872–84; 1886; 1889; and since 1894; with occasional attempts to include graduation or other incidental fees paid by the student.

Number of volumes in library. 1870–88; and since 1894; with various attempts to distinguish or exclude pamphlets.

Value of property and income. 1873–88; and since 1895; classified in many ways. The information is frequently not furnished by the school, and because of the unsatisfactory analysis is of little value when given.

Since the division of the *Report* into two volumes by Commissioner Harris in 1888–89, this primary table has usually appeared in Volume II.

Summary of law school statistics, by states

Since 1873 a portion of the primary information has been regularly summarized, by states, in a separate table. The totals of the number of schools, number of students, number of students with college degrees, and number of students graduating, thus secured are significant and fairly reliable for comparative purposes.

This table was originally buried in a long "Introduction." In 1885–86 it was placed for the first time near the table of individual schools in a chapter entitled "Professional Instruction;" in 1889–90, separated again, but located still in Volume II of the *Report*; in 1891–92, brought together again; in 1892–93, placed back in Volume I; since 1895–96, brought forward again to Volume II.

Comparative law school statistics for various years

A table showing the total number of law schools, of instructors and of students, in different years, was prefaced to the table of individual

statistics from 1873 to 1888–89, inclusive. In 1889–90 this was replaced by diagrams; in 1890–91, omitted; in 1894–95, revived, but placed with the Summary in Volume I; since 1895–96 brought forward with this to Volume II.

General summary of statistics of professional schools

A table bringing certain summarized statistics for law schools into comparison with those for other professional schools appeared, as the opening of the chapter, "Professional Instruction," from 1885–86 to 1888–89, inclusive. In 1889–90 this was replaced by diagrams; in 1890–91, omitted; in 1893–94, revived, but placed with the summary of law school statistics in Volume I; in 1895–96, brought forward with this to Volume II.

Miscellaneous tables

Beginning with 1880, the chapters devoted to instruction for the colored race included for some years information in regard to their law schools. In 1891 and 1893 tables showed the division of students between public and private institutions. In 1893 a table of benefactions since 1891 was published. In 1903 the number of law schools, compared with other professional schools, open to both sexes or to women only, with the number of women students, was shown.

Information other than statistical

Beginning with the *Report* for 1888–89, the influence of the newly appointed Commissioner, William T. Harris, is shown in the large amount of descriptive material dealing with foreign education. Included in this are several articles dealing with legal education in European countries. As regards our own country there is little except perfunctory comment or summaries of already published articles or addresses. The most ambitious effort was a special bulletin on legal education, issued in 1893, subsequently forming four chapters of the *Report* for 1890–91 (not published until 1894). This included, in addition to an account of legal education in foreign countries, a Report submitted to the American Bar Association in 1892 by its Committee on Legal Education, headed by William G. Hammond; an undigested compilation of curricula and admission requirements; a list of colleges giving courses in commercial law, international law, etc.; and a bibliography. Note, also, the attention paid to admission requirements in 1894, 1907 and 1910, and special articles contributed by Dean Henry M. Bates of the University of Michigan law school in 1914 and 1916. A special study, "Legal Education in Great Britain," by Dean H. S. Richards of the University of Wisconsin law school appeared as Bulletin, 1915, No. 18, whole number 643, of the United States Bureau of Education, and was not republished in the Commissioner's regular *Report*.

E. INFORMATION IN REGARD TO LEGAL EDUCATION CONTAINED IN REPORTS OF ASSOCIATIONS

The publications of the various bar associations, beginning with the *Report of the Committee on Legal Education and Admissions to the Bar, made to the Association of the Bar of the City of New York*, 1876, contain a great mass of material bearing upon legal education and bar admissions. Individually these addresses and committee reports are often valuable. Collectively, they have been rather fruitless. Absence of general indices to the serial volumes in which they are buried renders them practically inaccessible.

Material contained in the reports of state or local associations is, of course, apt to be relatively local in its appeal. For replies, however, to two questionnaires recently sent out to deans of law schools, boards of bar examiners and officers of the American Bar Association throughout the country, see 42 *New York State Bar Association Reports* (1919), 342–388; 43 *idem* (1920), 320–381. The elaborate analysis of replies to the second of these questionnaires was prepared in the offices of the Carnegie Foundation.

The Committee on Legal Education of the American Bar Association, prior to the appointment of William G. Hammond as chairman and William Wade Rogers as a member at the Chicago meeting of 1889, submitted only two reports. The volumes of the *Reports of the American Bar Association* in which these, and the action of the Association thereon, may be found, are Volumes 2 (1879), 14, 209; 3 (1880), 13, 29; 4 (1881), 27, 237. See, also, Shirley, J. M., "The Future of our Profession," vol. 6 (1883), 195; Judge Dillon's Annual Address upon "American Institutions and Laws," vol. 7 (1884), 11, 48, 203, leading to the Association's first expression of opinion in regard to the problem presented by the increasing volume of judiciary law, vol. 9 (1886), 9, 312; and the replies received to a questionnaire sent out by David Dudley Field, discussing the influence of legal education and admission to the bar upon the law's delays, *ibid.*, 71, 392, 478.

After 1890 the organization of the American Bar Association became so complicated that the following key to its various subordinate or affiliated organizations, in so far as these relate to legal education, and of the manner in which their activities have been recorded, may be found useful:

Publications of the American Bar Association. Beginning in 1878, annual *Reports* (*Rep. Am. Bar Ass.*) have been issued, usually in the form of single volumes, numbered serially. In 1906 two volumes were issued, the second (Volume 30) being devoted to the activities of subsidiary bodies. In 1907 two volumes were issued, the second (Volume 32) being a reprint of Sharswood's *Ethics*. In January, 1915, there appeared the first number of *The American Bar Association Journal* (*A. B. A. Journal*), issued quarterly. In September, 1920, this was replaced by the *Journal issued by the American Bar Association* (*Journal A. B. A.*), a monthly. The serial volume numbering of the original quarterly, by successive years, was retained, the first issue of the *Journal* in its new form being designated as Volume 6, No. 4. A new page numbering, however, was adopted. The index for Vol-

ume 6 (1920) covers both the old quarterly and the new monthly, using the letter "b" to distinguish the second series of pages.

Main Body. Proceedings, addresses, etc., delivered before the Association as a whole, reports of the treasurer, secretary and executive committee, the constitution and by-laws, obituaries, and lists of members, officers and committees, appear in the current *Report.* For the discussion attending the adoption of the new constitution in 1919, omitted from the *Report* of that year (p. 86), see 4 *American Law School Review* (1919), 455–460, and 14 *Illinois Law Review* (1919), 204–207. A list of all addresses and papers from the beginning, with the exception of the annual Address of the President, is included each year; *e.g.*, vol. 45 (1920), 322–328.

Committee on Legal Education. Formal reports, as distinguished from reports made orally to the Association and incorporated in the proceedings, were made in 1879, 1881, 1890, 1891, 1892, 1895, 1896, 1897, 1898, 1901, 1903, 1906, 1907, 1909, 1910, 1912, 1913, 1917. All were published in the *Report of the American Bar Association* of the same year. In 1917 the Committee was transformed into a Council on Legal Education, which submitted two reports, appearing respectively in 4 *A. B. A. Journal* (1918), 413, and 44 *Rep. Am. Bar Ass.* (1919) 264. In 1919 the Council was abolished.

Section of Legal Education. Proceedings and addresses of the years 1893 to 1915, inclusive, appear in the *Report of the American Bar Association* of the same year. Included are reports submitted by the Section's Committee on Standard Rules in 1908, 1909, 1910, 1911 (published in connection with that of the succeeding year) and 1912. In 1916, 1917 and 1918, only a brief summary of the proceedings, followed by the addresses, was published in the *Reports.* The text of the Standard Rules for Admission to the Bar, recommended by the Section in 1916, was published also in 2 *A. B. A. Journal* (1916), 829, in form differing as respects Rule XI from the version published in the *Report* of this year. The *Journal* text seems to be the correct one (16 *Handbook of the Association of American Law Schools*, 1916, 107; 42 *Rep. Am. Bar Ass.* 1917, 452). For a very full summary of the proceedings of 1918, see 4 *American Law School Review* (1919), 378–394. The proceedings in full of 1919, followed by the addresses, were published in 6 *A. B. A. Journal* (1920), 64–114; a summary of the proceedings of 1920, followed by the addresses, in the *Report* of that year; and the By-Laws, as adopted at this meeting and approved by the Executive Committee of the American Bar Association, in 4 *American Law School Review* (1921), 602–605. For list of 107 addresses delivered before the Section, see 45 *Rep. Am. Bar Ass.* (1920) 329–334. The list includes four delivered in 1905 and two delivered in 1913 in joint session with the Association of American Law Schools. It omits the following five: 1911, Bruce, Andrew A., "The Function of the Bar Examiner;" 1912, Bailey, Hollis R., "The Work and Aims of the Section;" 1913, Smith, Walter George, "Address of Chairman;" 1919, "Address of Viscount Finlay," "Address of Chief Justice John B. Winslow." Compare, also, extended remarks of Frank C. Smith, 17 *Rep. Am. Bar Ass.* (1894) 364–371; and paper by John R. Dos Passos, 36 *idem* (1911), 634–635.

Conference of State Boards of Bar Examiners. Summary of proceedings in 23 *Rep. Am. Bar Ass.* (1900) 576–583. This and the following not to be confused with the various Conferences of Bar Examiners held under the auspices of the Section.

National Conference of State Boards of Law Examiners. Summary of proceedings, and three addresses, in 27 *Rep. Am. Bar Ass.* (1904) 783–808.

Conference of Bar Association Delegates. Proceedings of 1916 were published in 41 *Rep. Am. Bar Ass.* (1916) 588–651; of 1917, in 3 *A. B. A. Journal* (1917) 580–630; of 1918, in 5 *idem* (1919), 15–81; of 1919, in 6 *idem* (1920), 14–63. Summary of the proceedings of 1920, in 45 *Rep. Am. Bar Ass.* (1920) 394, and 6 *Journal A.B.A.* (1920) 93.

Association of American Law Schools. The proceedings attending the organization of the Association were published in 22 *Rep. Am. Bar Ass.* (1899) 565–566, and 23 *idem* (1900), 447–458, 569–575. Proceedings, addresses and committee reports of the years 1901 to 1913, inclusive, appear both in the *Report of the American Bar Association* of the same year, and in the *Proceedings of the Association of American Law Schools*, published annually. In 1914 the law school association adopted the policy of holding its meetings apart from the American Bar Association, and

its *Proceedings* became the only record. In 1915 and 1916 the title of this publication was changed to *Handbook of the Association of American Law Schools and Proceedings*, and the Articles of Association and lists of member schools and of former officers, etc., were included. In 1917 and 1918 no meetings were held. Since 1919 the *Handbook* is again the record for the regular meetings held in Chicago during the Christmas vacations. In 1920 an additional summer meeting was held in conjunction with that of the American Bar Association; summary of proceedings, committee report and addresses were published in 45 *Rep. Am. Bar Ass.* (1920) 508–537; and for portions of the Annual Address of the President, at the December meeting, see 7 *Journal A. B. A.* (1921) 227–230. For list of 68 addresses, or organized discussions or conferences, including six addresses delivered in joint session with the Section (see above), see 17 *Handbook* (1919), 11–13.

F. LEGAL EDUCATION AND REQUIREMENTS FOR ADMISSION TO LEGAL PRACTICE OUTSIDE OF THE UNITED STATES

England

a. *Historical*

Report of the Commission appointed to enquire into the Arrangements in the Inns of Court and Inns of Chancery for promoting the study of the Law and Jurisprudence, Parliamentary Papers, 1855.

Christian, E. B. V., *A Short History of Solicitors*, 1896.

Pulling, Alexander, *The Order of the Coif*, 1884.

Incorporated Law Society, *The Records of the Society of Gentlemen Practisers in the Courts of Law and Equity, called the Law Society*, 1897.

Pollock and Maitland, *History of English Law*, I, 211.

Blackstone's *Commentaries*, Introduction, section 1, "On the Study of the Law;" Book III, chapter iii, "Of Courts in General."

Walton, J., "Notes on the Early History of Legal Studies in England," 16 *Rep. Am. Bar Ass.* (1896) 605.

b. *Contemporary*

Leaming, Thomas, *A Philadelphia Lawyer in the London Courts*, 1911.

Bedwell, C. E. A., "Conditions of Admission to the Legal Profession throughout the British Empire," 26 N. S. *Journal of the Society of Comparative Legislation* (1912), 209; 27 *idem*, 130.

Richards, H. S., "Legal Education in Great Britain," *U. S. Bureau of Education Bulletin*, 1915, No. 18, whole number 643.

Emmott, G. H., "Legal Education in England," 19 *Rep. Am. Bar Ass.* (1896) 605.

Cox-Sinclair, E. S., "Requirements for Admission to the Bar in Great Britain and on the Continent of Europe," 35 *idem* (1910), 809.

Bovey, W., "The Control Exercised by the Inns of Court over Admission to the Bar in England," 38 *idem* (1913), 767.

Hazeltine, H. D., "Preserving the Professional Ideal in England," 39 *idem* (1914), 912.

Winston, J. H., "Lawyers of England — How they are Made," 12 *Illinois Law Review* (1917), 307.

Consolidated Regulations of the several Societies of Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn, as to the Admission of Students, etc., 1920.

Annual Report of the Council of the Law Society, 1920.

The Law Society, *Subjects of Examination in the year 1921.*

Canada

Bedwell, *op. cit.*, v. 26, p. 216.

Riddell, W. R., *The Legal Profession in Upper Canada in Its Early Periods*, 1916.

Hoyles, N. W., "Legal Education in Canada," 22 *Rep. Am. Bar Ass.* (1899) 579.

McMaster, A. B., "Regulations governing Admission to the Bar of Quebec," 35 *idem* (1910), 829.

Lee, R. W., "Report to the Canadian Bar Association on Legal Education, Comments on," 1918.

France

Cox-Sinclair, *op. cit.*, p. 821.

Duquesne, J., Theoretische und praktische Ausbildung französischer Juristen," 9 *Blätter für vergleichende Rechtswissenschaft und Volkwirtschaftslehre* (1913–14), 183, 212.

Barclay, T., "The Teaching of the Law in France," 22 *Rep. Am. Bar Ass.* (1899) 593.

Fuller, Paul, "The Probationary Period in France," 39 *idem* (1914), 901.

McMaster, A. B., *op. cit.*, p. 835.

Zane, J. M., "The French Advocate," 14 *Illinois Law Review* (1920), 562.

Other Countries

Cox-Sinclair, *op. cit.*, pp. 815, 823 (includes Germany, Austria, Hungary, Spain, Italy, Belgium).

Bedwell, *op. cit.*, vol. 26, pp. 211, 222; vol. 27, p. 130 (includes Scotland, Ireland, Australasia, South Africa, India and Crown Colonies of Great Britain).

Lewinski, Karl von, "The Education of a German Lawyer," 33 *Rep. Am. Bar Ass.* (1908) 814.

Mecklenburg, Dr. Jur., "The Training of the Referendar in Germany," 39 *idem* (1914), 908.

Rodriguez-Serra, M., "Admission of Attorneys from the Spanish Standpoint," 35 *idem* (1910), 840.

Alden, E. P., "Legal Education in China," 41 *idem* (1916), 671.

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